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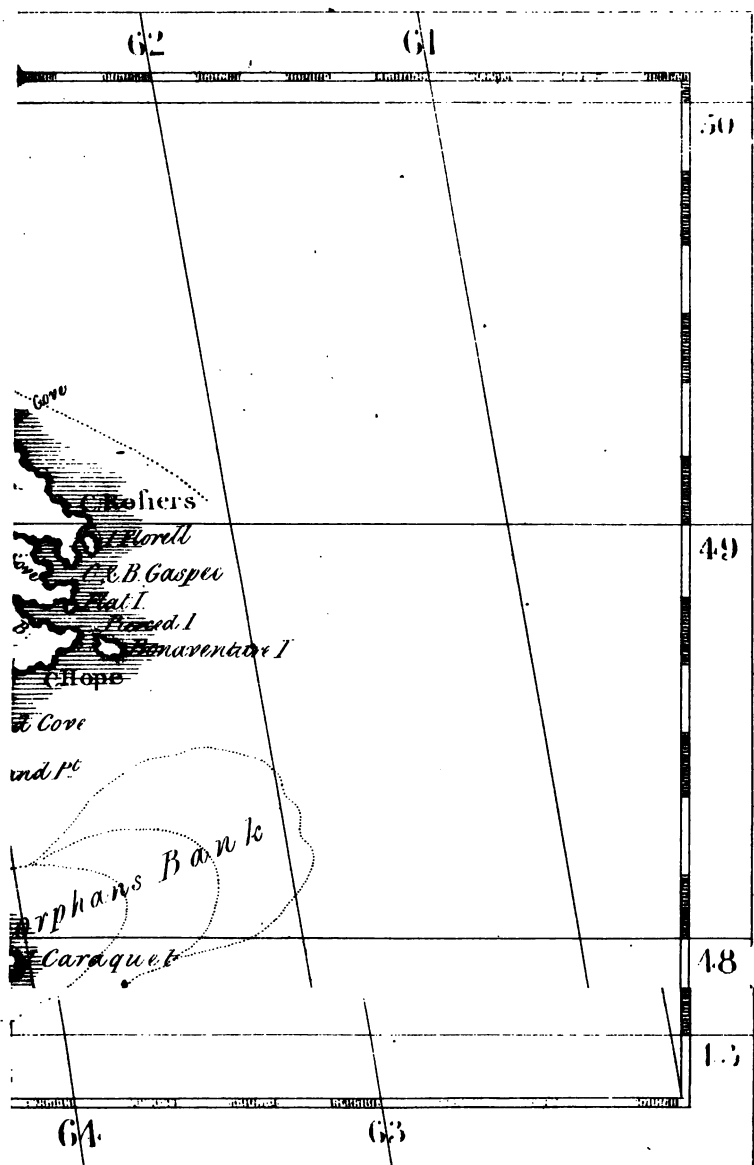
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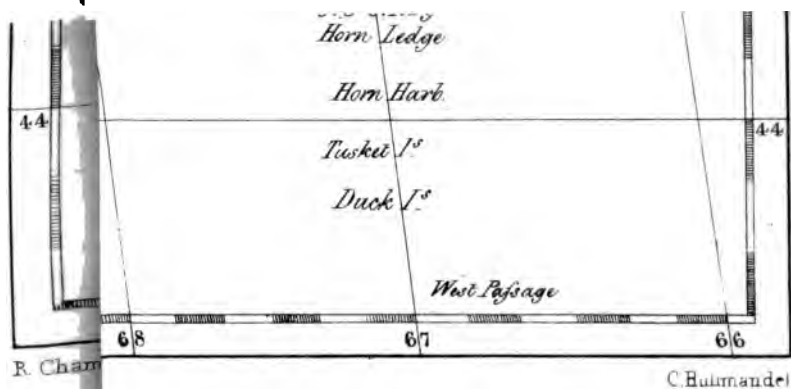
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C. Hullmandel.





GOVERNMENT OF CANADA.

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**DEBATES**  
OF THE  
**HOUSE OF COMMONS**  
IN THE YEAR 1774,

ON THE  
**BILL FOR MAKING MORE EFFECTUAL PROVISION FOR THE  
GOVERNMENT OF THE PROVINCE OF QUEBEC.**

DRAWN UP FROM THE NOTES OF

THE RIGHT HONOURABLE

**SIR HENRY CAVENDISH, BART.,**

MEMBER FOR LOSTWITHIEL,

NOW FIRST PUBLISHED BY

**J. WRIGHT,**

EDITOR OF THE PARLIAMENTARY HISTORY, ETC.

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WITH A MAP OF CANADA,  
COPIED FROM THE SECOND EDITION OF MITCHELL'S MAP OF NORTH AMERICA,  
REFERRED TO IN THE DEBATES.

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RIDGWAY, PICCADILLY.

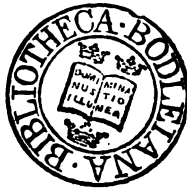
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## EDITOR'S PREFACE.

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THE Debates in the House of Commons, in the year 1774, on the Bill for making more effectual provision for the Government of the province of Quebec, are not reported in any of the publications of that time. So strictly was the standing order enforced for the exclusion of strangers, and so rigidly were those persons punished who ventured to make public the speeches of the members, that none but the merest outlines of the proceedings on this most important bill have been given to the world.

There was, however, at that time, in the House of Commons, a gentleman of rank and talent, who took copious notes, in short-hand, of the whole of these very interesting Debates; and from his manuscripts, the speeches contained in the following pages have been drawn up.

The bill was brought into the House of Lords by the Earl of Dartmouth, on the 2nd of May. It passed without opposition; and without any witnesses having been called to support the allegations upon which it was founded, on the 17th of the same month. On the 18th of June, it was returned to the House of Lords, with the amendments introduced by the House of Commons; and then the Earl of Chatham, though extremely ill at the time, came down to oppose it, stating, in a short speech, his conviction, that "it would involve this country in a thousand difficulties; that it was a most cruel, oppressive,



and odious measure, tearing up justice and every good principle by the roots; that the whole of it appeared to him to be destructive of that liberty, which ought to be the ground-work of every constitution; and that it would shake the affections and confidence of his Majesty's subjects in England and Ireland, and finally lose him the hearts of all the Americans." The bill was passed by a majority of nineteen; the contents being twenty-six, the not-contents seven. The minority consisted of the Duke of Gloucester, the Earls of Chatham, Coventry, Effingham and Spencer, and the Lords Sandys and King.

On the 22nd of June, the Lord Mayor, attended by several aldermen, the recorder, and upwards of one hundred and fifty of the common council, went up with an address and petition to the King, supplicating his Majesty not to give his assent to the bill. On their arrival at St. James's, the Lord Chamberlain acquainted them, by order of the King, that "as the petition related to a bill agreed on by the two Houses of Parliament, of which his Majesty could not take notice until it was presented for his royal assent, they were not to expect an answer." The King, who was then on the point of going down to Westminster to prorogue Parliament, immediately proceeded to the House of Lords, and gave his assent to the Bill; observing, that "it was founded on the clearest principles of justice and humanity, and would, he doubted not, have the best effect, in quieting the minds and promoting the happiness of his Canadian subjects."

As soon as the act reached Quebec, the English settlers met in the greatest alarm, and sent over a petition to the King, for its repeal or amendment. They complained, that it "deprived them of the franchises which they inherited from their forefathers;—that they had lost the protection of the English laws, so universally admired for their wisdom and lenity, and in their stead the laws of Canada were to be introduced, to which they were utter strangers;—that this was disgraceful to them as Britons,

and ruinous to their properties, as they thereby lost the invaluable privilege of trial by jury ;—and that, in matters of a criminal nature, the *habeas corpus* act was destroyed, and they were subjected to arbitrary fines and imprisonment, at the will of the governor and council.” Similar petitions were addressed to both Houses of Parliament. They are signed by nearly all “his Majesty’s ancient subjects, settled in the province of Quebec,” and the first name subscribed is that of Zachary Macaulay.

On the 17th of May, 1775, Lord Camden presented the petition to the House of Lords, and offered, at the same time, a bill to repeal the said act ; which bill, on the motion of the Earl of Dartmouth, was rejected. A similar motion, made in the House of Commons on the following day, by Sir George Savile, met with a similar fate.

The American Congress, in the same year, enumerated the passing of this act in their list of parliamentary grievances ; declaring it to be “unjust, unconstitutional, and most dangerous and destructive of American rights :” and, in 1779, Mr. Maseres, the recent attorney-general of Quebec, and then cursitor baron of the exchequer, gave it as his opinion, that “it had not only offended the inhabitants of the province itself, in a degree that could hardly be conceived, but had alarmed all the English provinces in America, and contributed more, perhaps, than any other measure whatsoever, to drive them into rebellion against their Sovereign.”

The act continued in force till the year 1791 ; when, in consequence of a message from the Crown, a new government was given to the province, and Canada was divided into the two provinces of Upper and Lower Canada.

After a lapse of forty-eight years, it is now proposed to re-unite them ; and, in May last, a message was brought down to parliament, recommending a measure to that effect. At this critical period, the Debates of that House of Commons which passed the original bill for giving a consti-

tution to Canada, possess a peculiar interest. They come before us, recommended by the magnitude of the subject, the great talents and high character of the several speakers who took part in these debates, and the importance of those views which are opened out by them. Two generations have passed away, and yet the debates might be conceived to be those of yesterday ; so completely are the circumstances of the country brought round by time to the point from which they first started.

*July 22, 1839.*

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N.B. THE large map which accompanies this volume is copied from the second edition of Dr. John Mitchell's eight-sheet map of the North American provinces, which was originally constructed at the desire of the Board of Trade and Plantations, and the first edition of which appeared early in 1755. Shortly afterwards, this first edition was withdrawn, and a second, containing numerous important corrections, was published ; but the date was not altered. Mr. Pownall, the secretary of the Board, certifies, upon both editions, that the map was " undertaken with the approbation, and at the request, of the Lords Commissioners, and was composed from draughts, charts, and actual surveys, recently taken by their Lordships' orders." Dr. Mitchell died in 1768.

To show the difference between the two maps, the editor of the present volume has had that portion of the first edition copied and inserted, which contains the part most involved in the actual dispute between England and America. A copy of this first edition was, with all its inaccuracies, published at Paris, by Le Rouge, in 1756.

### PROPOSALS FOR PUBLISHING,

In royal octavo, double columns, uniformly with "The Parliamentary History of England;" to which work it is intended as a Supplement,

### DEBATES OF THE HOUSE OF COMMONS,

During the Thirteenth Parliament of Great Britain, which met in May 1768, and was dissolved in June 1774; drawn up from the Notes of

THE RIGHT HON. SIR HENRY CAVENDISH, BART.,

Member for Lostwithiel in that Parliament; and now first published, with Notes, historical, biographical, and explanatory, by J. WRIGHT, Editor of the Parliamentary History of England, and of the Parliamentary Debates from 1803 to 1828.

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#### ADVERTISEMENT.

It has long been a subject of regret, that the proceedings in the House of Commons, during the thirteenth parliament of Great Britain, commencing in May 1768 and ending in June 1774, should, in consequence of the strict enforcement of the standing order for the exclusion of strangers, have remained nearly a blank in the history of this country.

With respect to the Debates of that period, the following curious passage may be found in a work entitled "Almon's Biographical Anecdotes," first published in the year 1797:—"If ever Sir Henry Cavendish should publish his account of the Debates in the British House of Commons, which he took in shorthand, during the time he sat in it, which was from 1768 to 1774, Mr. Burke's speeches, in that important period, will appear with undoubted accuracy, and will give a more interesting picture of those times, than any which has hitherto been published."

I met with this passage about fifteen years ago, and have ever since been endeavouring to discover in whose hands this valuable Collection of Debates was deposited; but it was not till the beginning of the present year, that I succeeded in finding it among the Egerton Manuscripts. It consists of forty-eight volumes quarto, and contains reports of all the important debates which took place, during the six sessions of the above-mentioned parliament. I

have been able to verify it, as the undoubted production of Mr. Henry Cavendish, at that time member for Lostwithiel, who became, on the death of his father, in 1776, Sir Henry Cavendish, and, in 1779, was made receiver-general of Ireland and a member of the privy council.

Shortly after this discovery, I was more fully impressed with the value of it, by perceiving, in the course of the recent debate on Lord Mahon's motion relative to Election Committees, that an authentic report of Mr. George Grenville's speech in 1770, on bringing in his bill for regulating the Trials of Controverted Elections, was much wished for ; and that great and general regret was expressed, that no sufficient report of it had been preserved. I was led by this to examine the above Collection ; in which I had the satisfaction of finding, not only an extended report of Mr. Grenville's speech, but a full account of the several debates which took place during the progress of that bill.

Having mentioned this discovery to Lord Brougham, and having shewn him a list of the numerous important debates which were contained in the Collection, I was encouraged by his Lordship to proceed in my design of editing and publishing the work. He not only wrote to several persons of distinction, warmly recommending it to their patronage, but, in his place in Parliament, called the attention of the House of Lords and of Her Majesty's ministers, to the public utility of the undertaking, and urged the propriety of affording me encouragement to carry it into effect. On my applying to the Trustees of the British Museum for permission to copy the MSS., I was very kindly informed, that they cheerfully acceded to my request.

The public will be gratified to learn, that these Debates contain upwards of one hundred speeches of Mr. Burke's, which have never seen the light, and a vast number of the most valuable speeches of George Grenville, Fox, Dunning, Lord North, Thurlow, Wedderburne, Barré, Blackstone, Beckford, Glynn, Burgoyne, Dowdeswell, Lord John Cavendish, Sir George Savile, &c. &c. The Collection embraces the whole of the stirring period of the publication of the Letters of Junius, and exhibits the feeling which prevailed in the House and the country, previous to the unhappy contest which took place between Great Britain and her American colonies. It contains all the discussions on the follow-

ing important subjects :—The Expulsion of Wilkes, Middlesex Election, Privilege of Parliament, Trials of Controverted Elections, Informations *ex-officio* by the Attorney-General, Liberty of the Press, Power and Duties of Juries, Law of Libel, Rights of Electors, Salaries of Judges, Affairs of the East India Company, Dissenters' Relief Bill, Proceedings against the Printers for publishing the Speeches of Members, Duration of Parliaments, Coin and Currency, Exclusion of Strangers, Nullum Tempus Bill, Criminal Laws, Royal Marriage Bill, Subscription to the Thirty-nine Articles, Civil List, Booksellers' Copyright Bill, Corn Laws, Poor Laws, Administration of Justice in Massachusetts's Bay, Boston Port Bill, Quebec Government Bill, &c. &c.; and on these, which are among the most important subjects that ever occupied the attention of Parliament, it gives us a faithful transcript of the opinions of some of the greatest men that ever lived in any age or country. It is of this period, that Gibbon speaks, in the following passage of his Memoirs :—"The cause of Government was ably vindicated by Lord North, a consummate master of debate, who could wield, with equal dexterity, the arms of reason and ridicule. He was seated on the treasury-bench, between his attorney and solicitor-general, the two pillars of the law and state, *magis pares quam similes*; and the minister might indulge in a short slumber, whilst he was upholden on either hand by the majestic sense of Thurlow, and the skilful eloquence of Wedderburne. From the adverse side of the House, an ardent and powerful opposition was supported by the lively declamation of Barré, the legal acuteness of Dunning, the profuse and philosophic fancy of Burke, and the argumentative vehemence of Fox. By such men, every operation of peace and war, every principle of justice or policy, every question of authority and freedom, was attacked and defended; and the subject of the momentous contest was the union or separation of Great Britain and America."

The early portion of the Collection has evidently been written out, under the inspection, or from the dictation, of the right honourable reporter himself, and apparently with a view to publication: another portion is written out from the short-hand notes, but the outline is not filled up: a third portion remains still in short-hand, which is perfectly intelligible to me. The system made use of is that made public in 1751, by Mr. Joseph Gurney, grandfather of the present short-hand writer to both Houses of

Parliament; of whom it is highly probable, that Mr. Cavendish took lessons: he certainly wrote it with uncommon facility. The speeches are more minutely detailed than is usual, or even necessary, in parliamentary reporting; but, from this exactness and fulness, one great advantage is derived—that every speech contains the actual words made use of, taken down without the least attempt at embellishment, and with such evident marks of the peculiar mind of the speaker, that we seem to have before us the very man himself.

It is another source of advantage to these Debates, that they were all reported by one person, sitting in the House, not liable to be confused by interruptions, not liable to be turned out in the middle of a speech, and having no motive for the immense labour which he underwent, but the desire of possessing himself of a record of the proceedings of the time, taken with the utmost accuracy. From these reports, Mr. George Grenville was supplied by Mr. Cavendish, in 1769, with a copy of the only speech he ever published—that against the motion for expelling Mr. Wilkes. Mr. Burke, also, received from the same quarter the report of his memorable speech on American Taxation, in April 1774, which he afterwards gave to the world in a corrected form.

By the publication of this Collection, the proceedings of a Parliament, which has hitherto been called “The Unreported Parliament,” will, at the end of sixty-five years, be more ably and fully recorded, by the talent and perseverance of one of its own members, than any part of the Parliamentary History of this country, previously to the relaxation of the standing order of the House of Commons.

The work will consist of four or five volumes, of the same size as those of the Parliamentary History, to which it is intended as a Supplement; and it will be published in parts, four of which will make a volume. The first part will appear as soon as a sufficient number of Subscribers is obtained, to guarantee the expenses of the undertaking. Those Noblemen and Gentlemen who may feel inclined to encourage the publication, are requested to communicate their names to the Editor, and also to signify their intention to their regular booksellers; by whom the work, when published, will be supplied.

24, *Albany Street, Regent's Park,*  
July 22, 1839.

J. WRIGHT.

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# DEBATES

IN THE

## HOUSE OF COMMONS,

&c. &c.

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*Thursday, May 26, 1774.*

ON the order of the day, for the second reading of the Bill “for making more effectual provision for the Government of the Province of Quebec, in North America,”

Mr. *Thomas Townshend*, jun.<sup>(1)</sup> rose and said :—Sir, as I have taken the liberty to call upon those members of this House who have the honour of being in his Majesty’s administration, to know why the affairs of Canada have been so long postponed—why that country, from the time of the peace to the present moment, has been left in anarchy and confusion—it may appear a little extraordinary that, upon the first attempt to bring it into order, I should rise to oppose the second reading of this bill. If I did it without some little explanation, I ought to have some allowance made me for any mistake in point of candour, and any inaccuracy in point of fact : but I will set myself right in the

(1) Son of the honourable Thomas Townshend, second son of the second viscount Townshend, and member for the University of Cambridge. Mr. Townshend, jun. was at this time member for Whitchurch. In 1782, he was made one of the secretaries of state ; which situation he resigned in April 1783, but was re-appointed in December, and continued in it till 1789. In 1783, he was created Baron Sydney, and in 1789, advanced to the dignity of viscount. He died in 1800.

opinion of those who sit over against me, by giving them my reasons for not consenting, at this time, to go into the further consideration of this bill.

Sir, having been for some time in possession of the bill, as printed in another place, I might have taken the liberty of making a few observations upon it on a former day, if it had not been that the attention of the House was pre-engaged to another subject. I have been told, that the reasons for this question not having been brought before Parliament earlier was, that, from the time of the cession of the colony, measures had been taken very slowly to get sufficient information of the state of the country; that the opinion of the governor, and of the great law officers of the Crown, had been taken; that those opinions had been laid before the great law officers of the Crown in this country, the attorney and solicitor-general, and the King's advocate; that the measure had been considered by the board of trade; and that, having gone through all these steps, it then remained for the joint opinion of the lord chancellor and the president of the council. Sir, I should wish to know who has adopted, or who is the father of the plan now before the House; whether it is that of the governor and the law officers of the Crown; whether it is the production of the board of trade; or whether, after all the opinions of those learned sages had been taken, it is the result of the deliberations of the ministry. Although I bow very low to all these great authorities, I must venture to mention one thing—that when I was calling for regulations for Canada, little did I think that I was calling for regulations for a country much larger than Canada; a country “extending,” in the words of the bill, “southward to the banks of the river Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the merchants adventurers of England trading to Hudson's Bay”—I say, Sir, that when I was calling for regulations for Canada, little did I think that I was calling for an arrangement which, I will venture to say, is oppressive

to the English subject, and disagreeable and hateful to the Canadian ; little did I think, that those subjects who had been invited by the Proclamation<sup>(1)</sup> which told them, that they were to have the law of England, that they were not to be put under a law totally unknown to them—were, at the same time, to be deprived of some of the most valuable parts of the law of their own country.

I know there prevails an opinion, that the best thing you can do with this country is to make it a French colony, to keep the English out of it as much as possible, that they may not mix with the Canadians. It has a convenient kind of religion, a convenient kind of law—let it be governed as it was before. Sir, whether this is practicable at present I will not pretend to say ; but if it be practicable, in my humble opinion, it is not very politic. If they are not to reap any benefit—and I think there is a benefit in going from the French to the English laws—will not men, with their inclinations French, with their constitution French, with their connection French, with everything French, except one man at their head who shall be a subject of Great Britain—will these people not wish, upon a future occasion, to recur back to the other part of their government which is not French ? will not the French king be naturally desired to complete the system ? Those who know the state of Canada will tell you, that many are settling their debts and retiring to France, accompanied by a large part of the people, and those the most opulent ; for it is a plan which could not be put in execution by families of small means. But then, there remains the connection ; and it is impossible that they should not naturally have their inclinations turned to their own government.

Sir, this bill, besides, gives to the governor of Canada the government of the entire province, the government of that country which is most settled by the Indians. It gives the French laws, it gives the French religion, to that

(<sup>1</sup>) For the Proclamation of 1763, see Appendix (A.)

country, a great part of which, as far as it can be called settled at all, is settled by people who are the natives of the British colonies. Now, for what purpose are they to be placed under French laws, unless it is meant to be laid as a foundation, that, for the future, French laws are to be the laws of America? If this is to be the case, Sir, that may be a good reason for extending French law to the whole Illinois, and to all that is intermediate between the Illinois and Canada. You have given up to Canada almost all that country which was the subject of dispute, and for which we went to war. We went to war calling it the province of Virginia. You tell the French it was only a pretext for going to war; that you knew then, you know now, that it was part of the province of Canada.

Sir, there are many parts to this bill, and I believe it is not strictly regular to go into a discussion of the several parts; but my reason for noticing it is this—I do not expect that this bill will be carried. I think it fairer, therefore, before the proposal for going into a committee comes, to throw out the objections that strike me most, to see if there is a chance of getting any of them removed. But, willing as I am to reject this bill, convinced that it is impossible at this period of the year to go into the consideration of a subject of so great importance, I should also wish to encounter as little inconvenience from it as possible, if it is to be persisted in; and therefore I should wish to know why Canada may not be reduced to some less limits; why not to the same limits England and France have ever given it; why not within some bounds, a little less than what is given to it here?

There is another reason which influences me in opposing this bill. One would be inclined to think it was only a temporary bill, whereas it is perpetual. Why not give it a limitation in point of time? Speak out! Do you mean that this shall be the permanent constitution of Canada? If you do, the bill is right as it stands: if not, at what time will you alter it? If the Canadians are quiet, you will not alter it; but, if they are refractory, if they think that a

promise that has been held out to them has been evaded, has been contradicted; if they think they have been denied the rights becoming new subjects, if they are uneasy under it—what then? Why, then you will say, “Would you have given those tumultuous fellows assemblies? Have you not assemblies enough in America already? Do you mean to have more assemblies? Under one or other of these pretexts the right of assembling will for ever be denied them. Therefore, Sir, disliking the bill from the beginning to the end, as far as to me it is intelligible, I shall, in the committee, if it reaches the committee, desire to have explained to me those parts which at present are quite unintelligible. I shall also propose to limit the extent of it to something a little more within the idea of the boundaries ever given to Canada, and likewise to limit the duration of the bill, which forms a government such as the world never saw before. The number of persons of whom the council is to consist is not to exceed twenty-three, nor be less than seventeen, who may be Catholics or Protestants, of whom no quorum is necessary, and of whom you know nothing in the world. To see that country put, by a perpetual law, under such a government, is what I cannot consent to, and must beg there to make my stand. If you do not mean to profess that this shall be the permanent constitution of Canada, you must make some limitation to this bill: it will then force itself under the consideration of Parliament, and we shall be able, at a subsequent period, to judge of the situation of this province, and how far, in this part of the British dominions, we have something like the British constitution.

As to the government as it now stands, this legislative council seems to me to be the very worst kind of government that can be invented. If it is not the proper time to give an assembly, it is better to let the governor be absolute—better to let him be without a council: he will be responsible; but what have we here? Seventeen or eighteen gentlemen, who may be removed or suspended by the

governor; so that if an act of oppression should come from the Crown, these may be a screen for the governor to excuse and justify him. I hope, Sir, it is unnecessary for me, when I make use of the word governor, to say I do not mean any offence to the particular person invested with that office.<sup>(1)</sup> I have a personal friendship for him, and entertain as high an opinion of him as any man who hears me can entertain; but this governor may be removed, may be removed to-day, and another individual may go in his room of a different complexion.

With regard to religion, I should like also to ask a question or two. Is the Roman Catholic religion, is the discipline of that church, to be established throughout that country? If it is, I should be glad likewise to know in what situation the bishop will be placed, with the exception of being subject to the King's supremacy, established by the act of the first of Queen Elizabeth. I am not able to quote acts of parliament, especially very old ones; but, if I am not mistaken, all authority derived from the see of Rome is taken away by that act. I should be glad to know also, whether, from this time, all ordinances, all commissions, are to be revoked, annulled, and made void. Are the present English lawyers still to do duty there? Are the men at the head of the courts of justice — one of whom,<sup>(2)</sup> with great satisfaction to the province, now exercises the office of chief justice there, and is as able and as amiable a man, as much respected there and beloved by his acquaintance here, as any one of the profession — is that gentleman to be taken away, and are you to have Canadian lawyers, or to borrow lawyers from the Continent?

What, Sir, is to be the situation of the British subjects? Many gentlemen have bought large estates in Canada; even large seignories are now held by British subjects. Are they to be entirely subject to French law? Has this been the policy of this country with regard to any other acquisition

(<sup>1</sup>) General Carleton.

(<sup>2</sup>) William Hey, Esq.

whatever, except one, Minorca? The Minorcans remain Spanish. Will the Canadians, in that respect, be in the same situation as the Minorcans? When Minorca was attacked, had you one Minorcan who did not join the French? Will the Canadians be less Frenchmen than the Minorcans Spaniards? What temptation do you hold forth to them! How much have you provoked them, even those who are the most amiable, the most respectable! How much do you court them to be disinclined to your government! Would it not be better, by degrees, to show them the advantages of the English law, and mix it with their own? You have done the contrary: you have taken from the English subject his benefit of the law of England, and you do not offer to the French subject that change of the constitution, which, if introduced in a moderate manner, would have attached him to this country.

I shall not, in the present stage of the bill, trouble you any longer; but I must desire to know, why a subject of this importance is driven off to the last week of May? Was there no other time of the session? Gentlemen are gone into the country; the elections are coming on very soon, and that is another objection. For all these reasons, I find myself, at this time, under the necessity of rejecting a bill, which, if carried into execution, will, I am convinced, tend more to rivet in the Canadians prejudices in favour of French rule, than it will to attach them to the government of England.

Lord *North*.<sup>(1)</sup> — I am sure, Sir, after what has been thrown out upon this occasion, I should be the last man in the world, though the honourable gentleman has repeatedly called upon his Majesty's ministers to lay down a plan for the government of Canada, to find fault with him for disproving the plan which is now offered. He will, Sir, exchange forgiveness with me, and excuse me if I do not answer the questions which he has put with so much warmth, and

(<sup>1</sup>) First lord of the treasury, and chancellor of the exchequer.



so pointedly, — “Whose bill is this? Is it the bill of the governor of Canada? Is it the bill of the law officers? Is it the bill of the lord chancellor? Is it the bill of the lord president?” Sir, I apprehend that is a matter of no manner of consequence to this inquiry. It comes down to us a bill from the House of Lords: if the House of Commons shall approve of it as it is, or if they shall think proper to return it with alterations, when it goes from hence to receive the concurrence of the Lords and the concurrence of the Crown, it will be a bill of Parliament. His Majesty’s ministers have been led to the proposal of this measure, in compliance with the repeated calls of several members of this House, as well as from the necessity of the case, and after having maturely considered the various opinions of those individuals who were able to give the best light and information upon the subject. Sir, this question has not been delayed from any other desire than that of being fully informed. Information has been sought from all quarters; from the officers of the Crown in Canada, and from the officers of the Crown at home; every person who could give information has been consulted. I do not know that this bill agrees precisely with the opinion of any one of them; but, Sir, this bill, as it was offered to the House of Lords, was the result of the opinion of the noble lord,<sup>(1)</sup> who offered what he conceived to be the best plan for Canada, the best plan for Great Britain, after considering and weighing every information, and receiving every light he could receive from every quarter.

The honourable gentleman thinks it so improper a bill, that it ought not to be suffered to be read a second time. Sir, if the honourable gentleman really thinks that the state of Canada is so much better than it was, that it ought not to be taken into consideration by the House of Commons—for this bill, in going through the committee, may receive very material alterations—if the honourable gentleman is of

(<sup>1</sup>) The Earl of Dartmouth, secretary of state for the colonies.

opinion, that Canada is now in such a state of order, that it is better not to proceed to consider this question any further, he is perfectly right in objecting to read it a second time. But I was so struck with the arguments used by the honourable gentleman, in the last session of parliament, to show the necessity of doing something upon the subject, that I certainly shall be of opinion, that we ought to give this bill a second reading, and allow it to go into a committee, to consider and discuss it still further. If the plan sent to us from the House of Lords is not a good one, let us alter it; but by no means let us leave the province of Canada in its present situation.

The first thing objected to by the honourable gentleman is, the very great extent of territory given to the province. Why, he asks, is it so extensive? There are added, undoubtedly, to it two countries which were not in the original limits of Canada, as settled in the proclamation of 1763; one, the Labrador coast, the other, the country westward of the Ohio and the Mississippi, and a few scattered posts to the west. Sir, the addition of the Labrador coast has been made in consequence of information received from those best acquainted with Canada, best acquainted with the fishery upon that coast, who deem it absolutely necessary for the preservation of that fishery, that the Labrador coast should no longer be considered as part of the government of New York, but be annexed to that country. With respect to the other additions, three questions very fairly occur. It is well known, that settlers are in the habit of going to the interior parts from time to time. Now, however undesirable, it is open to Parliament to consider, whether it is fit that there should be no government in the country, or, on the contrary, separate and distinct governments; or whether the scattered posts should be annexed to Canada. The House of Lords have thought proper to annex them to Canada; but when we consider that there must be some government, and that it is the desire of all those who trade from Canada to those countries, that there should be some government, my opinion is, that if gentlemen will weigh the inconveniences

of separate governments, they will think the least inconvenient method is to annex those spots, though few in population, great in extent of territory, rather than to leave them without government at all, or make them separate ones. Sir, the annexation likewise is the result of the desire of the Canadians, and of those who trade to those settlements, who think they cannot trade with safety as long as they remain separate.

The honourable gentleman next demands of us, will you extend into those countries the free exercise of the Romish religion? Upon my word, Sir, I do not see that this bill extends it further than the ancient limits of Canada; but if it should do so, the country to which it is extended is the habitation of bears and beavers; and all these regulations, which only tend to protect the trader, as far as they can protect him, undoubtedly cannot be considered oppressive to any of the inhabitants in that part of the world; who are very few, except about the coast, and at present in a very disorderly and ungovernable condition. The general purpose is undoubtedly to give a legislature to that country. It was very much, I believe, the desire of every person, if it were possible, to give it the best kind of legislature; but can a better legislature be given than that of a governor and council? The honourable gentleman dislikes the omitting the assembly; but the assembly cannot be granted, seeing that it must be composed of Canadian Roman Catholic subjects, otherwise it would be oppressive. The bulk of the inhabitants are Roman Catholics, and to subject them to an assembly composed of a few British subjects would be a great hardship. Being, therefore, under the necessity of not appointing an assembly, this is the only legislature you can give the Canadians, and it is the one under which they live at present. The governor and council really have been the legislature there ever since our conquest of it, and it is now put under some regulation. Hitherto, France has conducted the business—that is all the difference; if we do nothing, it must remain in the hands

of the governor and council. The question is, whether, so regulated, this is not better. All the other colonies have been governed by a governor and council ; it is not, therefore, so totally anomalous. The honourable gentleman objects to the want of a quorum. It is only giving full notice to all whose duty it is to attend, and when they do attend, things are to be decided by the majority, as in all other assemblies.

Now, Sir, with regard to giving French law—if gentlemen will remember, the most material part of the criminal law is to be according to English law. The civil law of Canada certainly is to be the French law : but, Sir, I understand the establishing of these laws to be given as the basis upon which the governor and legislative council are to set out. Sir, you would not send the governor and council to choose their own constitution—to choose their own laws entirely. You must tell them from what laws they are to take their departure. It has been thought better calculated to secure the happiness of the Canadians, and more beneficial for all who live in the country, that they should have the civil law of Canada, and not that of England. If the Canadian civil law is incompatible with the present condition and wishes of the colony, the governor and council will have power to alter it. But there must be a general basis; there must be a law established, ready to be amended and altered as occasions shall arise, and as the circumstances of the colony shall require. It has been the opinion of very many able lawyers, that the best way to establish the happiness of the inhabitants is to give them their own laws, as far as relates to their own possessions. Their possessions were marked out to them at the time of the treaty ; to give them those possessions without giving them laws to maintain those possessions, would not be very wise. The French law may be worse than the English, but the particular portions for which we have the highest value ourselves, are a part of our political law, and a part of our criminal law. These may be acted on in Canada, seeing that the criminal law

has been submitted to for nine years, and is, I dare say, approved of by the Canadians, because it is a more refined and a more merciful law than the law of France.

As to the free exercise of their religion, it likewise is no more than what is confirmed to them by the treaty, as far as the laws of Great Britain can confirm it. Now, there is no doubt that the laws of Great Britain do permit the very full and free exercise of any religion, different from that of the church of England, in any of the colonies. Our penal laws do not extend to the colonies; therefore, I apprehend, that we ought not to extend them to Canada. Whether it is convenient to continue or to abolish the bishop's jurisdiction, is another question. I cannot conceive that his presence is essential to the free exercise of religion; but I am sure that no bishop will be there under papal authority, because he will see that Great Britain will not permit any papal authority whatever in the country. It is expressly forbidden in the Act of Supremacy.

I dare say, Sir, I have not given an answer to many of the questions put to me by the honourable gentleman; nor do I recollect whether I have explained what I take to be the purpose of the present bill. It certainly gives to the Canadians many of their laws and customs; which laws and customs can be safely given to them. If alteration in those laws and customs should be deemed necessary, there is a legislature established, which will be ready to make those alterations. In a general plan of government, it is not possible to enter into a detail of what is proper, or what is improper, in Canada: it must be left to the legislature on the spot to consider all their wants and difficulties. The present bill will give laws, the principal laws, from which the legislature ought to take their departure—criminal law, civil law, political law. That is the purpose of the bill. It has appeared to be the best plan that could at present be devised; and it requires and deserves the immediate attention of the House. The honourable gentleman asks, why, before it was introduced into

the House of Lords immediately after Easter, full notice was not given, that it would come down here? Sir, we are not to blame for the omission: there is, however, abundance of time to go through the bill, to correct, to approve, or to amend it. His Majesty's message recommended Parliament to take up the subject:<sup>(1)</sup> and as soon as it was in a fit state to be laid before the other House, I am confident the noble lord brought it forward.

Sir, the honourable gentleman proposes to limit the bill in point of time. That will be a proposition for the committee to consider: it is not now proper to be entertained. If you mean to have the bill exist even but for a year, you will read it now a second time. The question of duration is a question that will come on hereafter; it is not a proper one for the present moment. I own I shall not be for a limitation, and I shall be ready to submit my reasons; but if the committee should think proper to alter it, I must acquiesce, rather than leave the Canadians without any legislature at all. Better far to give them some legislature, than leave them for three or four years in their present situation.

The honourable gentleman put a question to me concerning a revocation of the judges' commissions. Certainly, there can be no intention to remove any of those officers who are now there. It is a happy circumstance for this country, that gentlemen of their merit should have been willing to go and establish themselves there. It is a happy circumstance for the Canadians, that they are there established: but as the form of the courts of justice is not agreeable to the practice in England, it must be altered; which will make

(1) The King, in a message of the 7th of March, had called upon the House of Commons "to enable him effectually to take such measures as might be most likely to put an immediate stop to the present disorders in North America, and also to take into their most serious consideration, what regulations and permanent provisions might be necessary to be established, for better securing the just dependance of the colonies upon the Crown and Parliament of Great Britain."

a revocation of their commissions necessary. I dare say, and I am sure I hope, they will be given to the same individuals, who have exercised their functions so honestly. Nothing, I am confident, will stand in the way of it, but the wishes of the gentlemen themselves. I have not heard that any of them desire to quit their situations; and it most assuredly is neither the interest of his Majesty, nor that of his subjects, to desire them to quit the posts they so honourably hold.

Mr. *T. Townshend*, jun.—The noble lord misunderstands me. I certainly did not wish to have it go forth to the world, that the whole of the country was to be subject to French law, and that the established religion was to be that of the Roman Catholics; but what I complained of particularly was, the carrying that system of law into a country where it was not extended at present. Near the Illinois and Fort du Cane, I am informed there are at this time upwards of five-and-twenty thousand British settlers. With regard to the bishop, and with regard to religion itself, you will find, that to leave the matter in doubt will be worse than any thing. My reason for giving an opposition to the bill in this stage of it is, because I think the period of the year is one in which no attention will be paid to it; and I am convinced that it would be better for the Canadians themselves to wait another year, when Parliament could pay due attention to it, rather than to take it up at this present period of the session. I could have wished, when you have a large portion of the country settled with regard to its civil jurisdiction, to have seen the political part of it, the part the most dear to Englishmen, and at the same time acceptable to the Canadians, admitted. Does the noble lord think the law of Habeas Corpus of no value to Englishmen? I should be sorry indeed to see any Englishman deprived of it; and I think that, having promised the Canadians your English law, the giving them French, is doing them a great injustice.

*Mr. Dunning.*<sup>(1)</sup>—Sir; late as it is in the session, and thin as is the attendance of the House, I should hold myself inexcusable, if I suffered a bill of this importance to pass through the present stage, without delivering my opinion upon it, and without giving it as much opposition as can be given by a single negative. Having prefaced thus much, it will be proper for me to state the reasons that have induced me to act in this manner. I collect, and am sure it is to be collected, from what fell from the noble lord, in answer to the honourable gentleman's question, whether this was meant to be a permanent measure, or to be qualified and made temporary by some provision, which it was the business of the committee to add, that it was not the intention of the noble lord that it should be temporary, but that we are to take it in its present form, for we can get it in no other.

Conceiving therefore, Sir, from the omnipotence of the noble lord, that this bill will be perpetual, not temporary, I see the mischief in a light still more mischievous. I see the bill stripped of all those reasons in its favour, which my imagination had enabled me to foresee might have been assigned for it. Sir, the bill is as extensive as any bill that was ever offered to the consideration of Parliament. Its direct object is to take from a large number of the King's subjects that constitution which was given to them ten years ago; to take that constitution from them, and to give them another in the place of it. Have, Sir, those subjects expressed a wish to part with what has been given them? Have they expressed a wish to have the one which is to be given in the place of it? I apprehend no such wish

<sup>(1)</sup> This eminent lawyer had, in 1767, filled the office of solicitor-general; which he resigned in 1770. Through the influence of the Earl of Shelburne, he sat in three parliaments for the borough of Calne. In 1782, he was made chancellor of the Duchy of Lancaster, and advanced to the peerage, by the title of Lord Ashburton. He died in the following year, at the age of fifty-two.



has been communicated to this House; and if any servant of government in that country has sent home a representation to that effect, such representation is equally unknown to me, and I apprehend to the rest of the members of this House; but if any such representation is intended to be made, I should wish this House to be acquainted with it.

The provisions of this bill so far partake of all the American regulations of this year, that they are offered at a time, and are to be carried through in a time, which precludes the individuals interested from being heard; whether they do desire, or do not desire, to show how their interests are affected; whether they expect benefit, or apprehend mischief therefrom. The first object of the bill is to make out that to be Canada, which it was the struggle of this country to say, was not Canada. Now, Sir, if this province should ever be given back to its old masters—and I am not without an inclination to think, that the best way would be to give it back to its old masters—if it should ever become right to give back Canada, with what consistency can a future negociator say to France, we will give you back Canada; not that Canada which you asserted to be Canada, but that stated in the proclamation, having discovered that we were mistaken in the extent of it; which error has been corrected by the highest authority in this country. Then, suppose Canada thus extended should be given back to France, the English settled there will then have a line of frontier to an extent undefined by this bill; for this country is bounded by the Ohio upon the west—God knows where! I wish God may not alone know where. I wish any gentleman would tell us where. I observe in this description of the frontier, a studied ambiguity of phrase. I cannot tell what it means; but I conjecture that it means something bad. The Ohio is stated as a boundary confirmed by the Crown; but what act, what confirmation by the Crown, has passed upon this subject? I know of no such act, of no such confirmation. I know, by the terms of the charter, the

colonists suppose, and I think they are well grounded in the supposition, that they are entitled to settle back as far as they please to the east, to the sea, their natural boundary. They did not like a different barrier. I know some assert this right, and that others content themselves with a less extensive claim. Whether so extensive a claim has been allowed I know not; but I do understand, in point of fact, that there has been long subsisting a dispute about the western frontier, which was never discussed, still less decided; and when this bill shall become a law, those colonists will then learn, that this Parliament, at this hour, have decided this dispute, without knowing what the dispute was, and without hearing the parties.

Looking, Sir, at the map, I see the river Ohio takes its rise in a part of Pennsylvania, and runs through the province of Virginia; that, supposing myself walking down the river, all the country to the right, which is at this moment a part of the province of Virginia, has been lopped off from this part, and becomes instead a part of Canada; for we tell them, the instant they pass that river, which by the terms of the charter they may pass, that matter is now for ever at rest; the moment, say we, you get beyond that river, you are in the condition in which this bill professes to put Canada; the Indian finds himself out of the protection of that law under which he was bred. Sir, do we treat the proprietors of the next province, Indiana, well? Some of them are resident in this country. I apprehend, at this very hour, they are unapprized of this bill to stop them. To decide upon questions without exactly knowing whether such questions are existing, is an obvious injustice.

As to extending the country, this is the inconvenience: it is abundantly safer to have regular posts of arms from the north to the south. Forts may be erected, and lawfully erected; troops may be convened, and lawfully convened, whenever there is occasion to use them, to take possession of all the English colonies. This seems to me to be a danger, which this extent of territory threatens. These are the mis-

chiefs; and I should be glad now to learn, what is the good intended to be effected by this extent of territory? The noble lord says,—it is to comprise a few straggling posts, under some form of government. If I should admit the necessity of so comprising a few straggling posts, does it follow, that this is a form of government fit to be established? Does it follow, from any local reasons, why Canada should be so extensive? or that the English settlers should likewise be involved? What objections are there to making more settlements? Whatever they are, they will be found trivial, compared to the consequence of involving this whole region in this form of government.

However, let us see, Sir, what is the form of government, for the sake of which this bill is to be supported. The form of government is this. The Roman Catholic religion is established by law. All the arguments urged by the noble lord, tending to shew that, *de jure*, the Roman Catholics are entitled to a full toleration, I admit to be well founded in law; but does that imply, that the same toleration should be given to them every where? Upon the last part of the case, different gentlemen may entertain different opinions. My opinion of toleration is, that nothing can be more impolitic than to give establishment to that religion which is not the religion of our own country. Among the circumstances that unite countries, or divide countries, a difference in religion has ever been thought to be the principal and leading one. The Catholic religion unites France, but divides England. Without going further into the subject, it suffices for me to say, that the religion of England seems to be preferable to the religion of France, if your object is to make this an English colony. When one sees that the Roman Catholic religion is established by law, and that the same law does not establish the Protestant religion, the people are, of course, at liberty to choose which they like. Permission is given to the governor, to do what he will with the Protestant religion; and this, to those who are gone there in pursuance of the proclamation, may give encourage-

ment ; but the bill gives them none. Are we, then, to establish the Roman Catholic religion, and tolerate the Protestant religion ? I conceive so ; for this distinction is founded in the terms of the bill.

The noble lord says, the free exercise of religion was promised by the treaty of peace—was promised by the proclamation. Does the noble lord say, that this bill gives them nothing more ? If the noble lord will do me the favour of casting his eye a little down the same page, he will see that the clergy of the Roman Catholic religion are reinstated in all their accustomed rights and dues. What, Sir, are those accustomed rights and dues ? I wish some gentleman would do the House the favour to inform them, what is the extent of the rights and dues of the Roman Catholic clergy. I take leave to suppose that, under the denomination of Catholic clergy, the bishops' rights and dues are included. The noble lord says, there is no papal jurisdiction. I wish to be told, what is the authority by which he becomes a bishop ? I know he becomes such by consecration in France ; but, in order to qualify him for this present office, the noble lord will be so good as to tell us what the act appoints. We shall then be able to judge how far he considers himself of papal constitution, or instituted by government. Sure I am, if he is allowed to exercise this right, he will be found to insist upon it.

But, Sir, the religion of the country is only one of the various objects which this bill professes to regulate and establish, throughout this vast extent of territory. The bill provides, that the laws of Canada are to be in future the laws of the country. As the bill first stood in the other House of Parliament, it was not expressed whether the laws were to be those of Canada or England. The clause stood, with the omission of those words ; but Canada is now inserted, and all persons are henceforward to be subject to that law. As to all their civil rights, the noble lord has informed us, that the criminal law of England is to be preserved by this bill, agreeably to the

proclamation. But, Sir, is the criminal law alone that on which we pride and value ourselves? Have we no civil law, on which we pride and value ourselves? Is there nothing at all in the constitution of England worth priding and valuing ourselves upon, but the mode of trying criminals? Is that the single circumstance that makes the English constitution valuable? This is new language to me. If that is the idea of the noble lord, I wish him joy of it; but, to do him justice, I believe he did not mean to be so understood, in the largeness of the phrase. Whoever may think the criminal laws are alone the valuable part of this constitution, I beg leave to say, that the civil distribution of justice in this country is, in my apprehension, its pride, its boast, and its glory; and that it is among the most valuable rights that any country can enjoy. To my apprehension, the trial by jury is the best adapted for the investigation of truth—for the establishing of truth—for the distributing equal justice—of any measure of which the annals of history have furnished us with any intelligence. Young, Sir, as I am in my profession, I am old enough to remember,—and it will for ever dwell in my recollection, unless driven out by the principle which the noble lord has endeavoured to establish—I am old enough to remember to have heard, that the institution of juries began at a time, and was adapted to a state of things and persons, very different from the present. To find out the time, it is necessary to contrast it with the trial by ordeal and the trial by battle. Will this earlier principle be avowed now to be the principle of the King's lawyers in this House, or the other House, or in any house?

The honourable gentleman who opened the debate asked, whence this bill came? He was only answered, that it came from the House of Lords. I am glad it is imputable to any house rather than our own. I believe no individual in this House will own it. I believe that I shall not do injustice to my learned friends opposite—that I shall not be found a false prophet—when I take leave to say, that they will dis-

own it. But if, Sir, it was neither a measure of any man in that House, nor in this House, does it come from the King's servants in the law department in Canada? Nobody respects them more than I do; nobody knows them better. I am persuaded, that the degree of respect in which they are held depends upon the degree of knowledge which all men have of them. But we are not left in the dark upon that subject; for one of those gentlemen has communicated to the world his ideas upon the subject of this bill; and whoever has taken the pains to read his work will have found, that nothing can be more diametrically opposite to the bill, than the opinion that gentleman entertains upon this subject. It is not proper for me to ask—it is not proper for me to answer, even if I was asked myself—what his opinions are; but I have good authority for knowing his opinions upon things in general. I know him to be so good an Englishman, so good a lawyer, so good, so firm a friend of this constitution, that for his sake I shall hope the House will not suspect he has any thing to do with this business. From that congregate and aggregate body, then, the House of Lords, this mischief comes; but are we to cherish it? It is easy to see what treatment it will meet with here. This proposed constitution for Canada does this: it denies to English subjects the English birthright, trial by jury. Sir, the most valuable of their civil rights is taken from them by this bill. The honourable gentleman near me observes, that the Habeas Corpus is among those civil rights. Is that among the laws of Canada?—I do not know what they are. I cannot put questions. I cannot see any man here who would be warranted in giving me an answer, if I did ask questions about those unknown laws of Canada. We know, however, so much of them, as to know that they are adopted from France. The Canadians brought them from France; and is it not among those laws, that the governor may issue a *lettre de cachet* to send away whom he pleases, to shut up whom he pleases? I know *lettres de cachet* are issued against persons not

charged of any crime; not even suspected of any: some reasons have, notwithstanding, operated to make a man invisible for a time. This law of France I take to be transplanted to Canada by this bill. By the laws of England, a man may find his remedy: the laws of Habeas Corpus are among the laws of England: they existed at common law; in some instances, they are made more beneficial by the statute law. But when the laws of Canada are looked to in order to furnish redress, the same laws will, of course, refuse any redress. Is this a trifle, to leave the people of Canada in a situation, which any man who hears me would shudder to be left in himself? Whether this legislative council has authority to add to the number of those laws—whether those laws are the groundwork, as the noble lord says, in conformity with which, according to the plan sent to them, this legislative council is expected to make new laws, in the spirit and temper of the old ones—I trust that those gentlemen who are now sending to Canada, to a district of this immense extent, a constitution of this nature, will not be found to furnish arguments in favour, either of abolishing the trial by jury, or of establishing the laws of France.

I see also, that this country is henceforward to be governed by a legislative council, consisting of seventeen at least, and not more than twenty-three. The governor may make and unmake his creatures, as they become fit tools for his purpose. They will therefore at all times, while in their senses, be solicitous and anxious in endeavouring to guard against incurring his displeasure. The minister has nothing to do but issue his order: those individuals have nothing to do but obey. He will find the inhabitants at his disposal; because the inhabitants who are at his disposal are creatures of the minister. In my apprehension, Sir, if the King remained the sole legislator of the country, the condition of it would be better than when the governor is put in his place to exercise that power.—[Here Mr. Dunning paused along time.]

I should have been sorry to have forgotten the avowed purpose of bringing in this bill. It is no less than to exer-

cise, by assuming, for the purpose of exercising it, the dispensing power which, hitherto, is claimed only by the great pontiff, the pope. We are to take his place; we are to regulate, model, dispense with the King's conscience. The King, thirteen years ago, gave a constitution. The King, upon that occasion, gave encouragement to future settlers. Though the King is said to be the sole legislator, it is a strange inconsistency, that he should be hampered by his own legislation. Some doubts have arisen upon this part of the case, for want of looking forward; and the consequence is, when any temporary inconvenience arises, then a breach of the King's promise—a breach of the King's compact, is talked of: but is it fit, is it decent, that the King's word should be brought into question? But somebody else should do it for him! The King would be thought to act an unbecoming part if, in violation of his promise, he were to take from them their former constitution, and give them a different one; but it is proper enough for Parliament to do that! Sir, how comes this to be so? Have gentlemen a precedent to produce, to prove that it is proper for Parliament to do it, and not proper for the King himself to do it? But is it not, at the same time, fit that the promise should be kept? Ought you not, upon the principle of strict justice, to make some provision for persons coming to the place upon promise that the English laws should be continued, who find out that they have got into a country governed by a despotism;—that they have got into a country where the religion they carried with them has no establishment?—that they have got into a country where they are to wander throughout an immense extent of territory, or to find their way back again as they can; which they will do, when they consider the treatment they are to meet with if they remain there?

Sir, the bill professes ostensible good, but is pregnant with ostensible mischief. It is not adopted or avowed by any body, abroad or at home. All the answer the honourable gentleman received to his question was, "this is a bill



that came from the House of Lords." If that circumstance alone is a sufficient reason for passing it, without any argument, to be sure the bill is so far entitled to the concurrence of this House; but if something more like a reason is thought necessary, I shall be glad to hear it; I shall be glad to have a ground to change my opinion. Until then, Sir, I shall certainly give this bill a decided negative.

The *Attorney-General*.<sup>(1)</sup>—I do not rise to avow or disavow any thing. I should think I flattered myself if I presumed, in case I had drawn every line of the bill, that that circumstance would go any way to recommend it to the consideration of the House; much less do I hope to change the opinion of either of my honourable and learned friends who have spoken upon the subject; because, when they have told you they oppose the second reading, they have not acquainted the House with any measure, either of policy or justice, which they would substitute in the place of it: and yet I flatter myself it would require very little argument to convince us, that something ought to be done upon the present occasion. But the honourable gentlemen have gone a considerable way beyond the question immediately before us; for, not confining themselves to that question, they have anticipated the business, and have gone to new arguments for new-forming the bill, which do not apply against reading it a second time, but rather for it. Sir, I will follow them so far as to state to the House, and endeavour to answer, the objections they have urged. The honourable gentlemen complain, that the bounds of Canada extend a great way beyond what they were acknowledged to do formerly, and that it was peculiarly bad policy, as far as regarded the French, to give the limits so great an extension. Now, the House will remem-

(<sup>1</sup>) Edward Thurlow, esq. He was appointed solicitor-general in March 1770; attorney-general in June 1771; and, in June 1778, succeeded Lord Apsley as lord high chancellor of England, and on the same day was raised to the peerage by the title of Lord Thurlow of Ashfield, Suffolk. He resigned in April 1783, but was re-appointed in the following December, on Mr. Pitt's being nominated prime minister. On his final resignation in 1792, he was created Lord Thurlow of Thurlow, in Suffolk. He died in 1806.

ber, that the whole of Canada, as we allowed it to extend, was not included in the proclamation; that the bounds were not co-equal with it as it stood then, and that it is not included in the present act of Parliament, if that were material.

But I will not, Sir, consider it as the province that formerly belonged to France, nor as called by the same name: it is a new scheme of a constitution adapted for a part of the country, not that part only which was under French government, but embracing many other parts of great extent, which formerly were not actually under French government, but were certainly occupied, in different parts, by French settlers, and French settlers only. The honourable gentlemen are mistaken if they suppose that the bounds described embrace, in point of fact, any English settlement. I know of no English settlement embraced by it. I have heard a great deal of the commencement of English settlements; but, as far as I have read, they all lie on the other side of the Ohio. I know, at the same time, that there have been, for nearly a century past, settlements in different parts of all this tract, especially the southern parts of it, and to the eastern bounded by the Ohio and Mississippi: but with regard to that part, there have been different tracts of French settlements established, as far as they are inhabited by any but Indians. I take those settlements to have been altogether French; so that the objections certainly want foundation. With regard to the east, there is no doubt but the bounds of those parts are extended largely; and that the laws by which they are proposed to be governed are calculated either for a country perfectly settled, which is not the case of that country at present to the south, or they are calculated to carry that degree of control and authority which is necessary. As to the settlements that lie to the south, in order to prevent the inconvenience of uncontrolled settlement, in that view I have been persuaded to think the extent of this province may be a political and a proper measure; but with respect to the circumstance of

the French founding any claim upon it, I confess it is a notion more refined than my understanding will embrace. My notion is, that in the state they were in, they were nearer to this country, and their claim against the length of that extent depends upon no other circumstance whatever. It is undoubtedly true, if you read the French history, that the bounds prescribed neither are, nor ever were, the bounds of the province of Canada, as stated by the French ; and, therefore, the argument itself is not a proper one to proceed upon. But, Sir, let us consider it in a point of view more serious. Let us consider it established as an English province. The House has been told, that this bill trenches considerably upon the claim of other chartered provinces. I do not pretend to be extremely familiar with their bounds, but I apprehend Pennsylvania has never been stated by any of its proprietors to go one acre of land within the precincts of this new province. With regard to other chartered governments, there is no doubt that various contests to the north of Pennsylvania have arisen upon their bounds; and this has been stated, and allowed by his Majesty in his privy council ; which, I suppose, was the occasion of introducing the phrase in this part of the bill. With regard to the more southern part of the country, I do not take it that Virginia has ever made a single claim within more than a hundred miles of the bounds prescribed for the present province. The most extensive claim I ever heard of, went to what is called the Endless Mountains, just in a nook of the province of Virginia. I know of none that ever pretended to exceed that, nor ever heard that some new settlements which were applied for, between those mountains and the Ohio, have ever been looked upon as an invasion of the rights of those who have claims upon the province of Virginia.

With regard, Sir, to the rest of the inconveniences : we have been told, that this bill proposes to take from our fellow-subjects of Canada a constitution, which has already been given, and to place them under a despotism, unfit to

be established in any province belonging to Great Britain. The articles mentioned in support of this assertion are, the religion and civil law of the Canadians being established at Quebec, and the political government formerly in Canada being continued there. I will say one word, if the House will indulge me, as to the taking away the right formerly given. Canada was a country that had been held by the French for above two hundred years before our conquest of it. It had been taken from the people of France by the King of France, and put under his immediate government, for above a hundred years before it was taken by our people. At the time of the conquest, with 120,000 souls, if I recollect right, there were about one hundred and fifty of those of the order of noblesse. The original form, not of the government, that is not said, but the original form of civil justice, under which they lived (using the word "civil" in the largest sense, for it took in both civil and criminal law), was taken from them; but there was very little of the law contained in the Parisian book carried over to the country. The reason is exceedingly obvious, because, in the establishment of a country totally new, differing in all particulars from the country of old France, it would have been the most enormous of all cruelties to have carried over a law, from the meridian of Paris, in order to put it into immediate execution in a raw, unformed province. So much as was carried over appears to have received very considerable alteration from the legislature which the King of France established there. The legislature consisted of the governor and of the council, which they called the superior council, and in which the intendant of police bore a principal part. Beyond the authority which he had as a magistrate, and as the president of the council, he had great independent authority in making laws of police; he had great independent authority in being sole judge of all causes that related to the revenue; and under that establishment the province remained for ninety or one hundred years, before it was taken by the English. When it was taken, gentlemen will be so good as to recollect upon what terms

it was taken. Not only all the French who resided there had eighteen months to remove, with all their moveable effects, and such as they could not remove, they were enabled to sell; but it was expressly stipulated, that every Canadian should have the full enjoyment of all his property, particularly the religious orders of the Canadians, and that the free exercise of the Roman Catholic religion should be continued. And the definitive treaty of peace, if you examine it as far as it relates to Canada, by the cession of the late King of France to the Crown of Great Britain, was made in favour of property; made in favour of religion; made in favour of the several religious orders. In this situation it was, that the Crown of this country was called upon to form a constitution for Canada: yet, something has been thrown out, as if it was a favourite idea of certain men of this country, that the Crown should be considered as the legislator of a country newly conquered. I will not run through all the authorities, and all the arguments, which are common-place upon the subject; but I have always considered the English constitution, upon that point, to be this,—that what was conquered by the arms of England acceded to the English sovereign, which is as much as to say, to the King, Lords, and Commons of England. I have always understood, also, that it was under that authority, and in conformity with the rule and measure of law, that in every instance, through every period of English history, the King has given to newly-conquered countries their constitution; subject to be corrected by the joint interposition of the King, Lords, and Commons of this country; and that such constitution might be reformed, by correcting the ill advice, if any ill advice had been given, under which the King had acted, in giving them a constitution, upon the event, and at the moment, of the conquest.

Then, Sir, the question occurs—upon the conquest of this country, what was it incumbent to advise the King to do with respect to it? I have heard a great deal of the history

of the famous proclamation of 1763 ; which, though not an act of Parliament, fares pretty much as ill as this proposed act appears to do ; for I think it meets with nobody to avow it. The proclamation certainly gave no order whatever with respect to the constitution of Canada. It certainly, likewise, was not the finished composition of a very considerable and respectable person, whom I will not name, but went unfinished from his hands, and remained a good while unfinished in the hands of those to whom it was consigned afterwards. It professed to take no care of the constitution of Canada : it states all the acquisitions, both of the peopled countries and barren territories—the latter being many hundred times larger than the former—which were made in the course of the last war ; and, speaking of them all in general, it declares to mankind, that his Majesty thought proper to divide them into certain distinct and separate governments ; that it was in his Majesty's contemplation to give them a constitution, like that which had been given to the other colonies, as soon as the circumstances of the colony would admit of it ; and it promised to settlers, expressly to invite them to settle, that, in the mean time, they should have the benefit of the laws of England. So ran the proclamation. Now, Sir, a proclamation conceived in this general form, and applied to countries the most distant, not in situation only, but in history, character, and constitution, from each other, will scarcely, I believe, be considered as a very well studied act of state, but as necessary immediately after the conquest. But, however proper that might be with respect to new parts of such acquisitions as were not peopled before, yet, if it is to be considered according to that perverse construction of the letter of it ; if it is to be considered as creating an English constitution ; if it is to be considered as importing English laws into a country already settled, and habitually governed by other laws, I take it to be an act of the grossest and absurdest and cruelest tyranny, that a conquering nation ever practised over a conquered country. Look back, Sir, to every page of history, and I defy

you to produce a single instance, in which a conqueror went to take away from a conquered province, by one rough stroke, the whole of their constitution, the whole of their laws under which they lived, and to impose a new idea of right and wrong, of which they could not discern the means or the end, but would find themselves at a loss, and be at an expense greater than individuals could afford, in order to inform themselves whether they were right or wrong. This was a sort of cruelty, which, I believe, was never yet practised, and never ought to be. My notion, with regard to this matter, I will venture to throw out as crude and general. To enter into the subject fully, would require more discussion than the nature of such a debate as this will admit of. My notion is, that it is a change of sovereignty. You acquired a new country; you acquired a new people; but you do not state the right of conquest, as giving you a right to goods and chattels. That would be slavery and extreme misery. In order to make the acquisition either available or secure, this seems to be the line that ought to be followed—you ought to change those laws only which relate to the French sovereignty, and in their place substitute laws which should relate to the new sovereign; but with respect to all other laws, all other customs and institutions whatever, which are indifferent to the state of subjects and sovereign, humanity, justice, and wisdom equally conspire to advise you to leave them to the people just as they were. Their happiness depends upon it; their allegiance to their new sovereign depends upon it. Sir, what happened at the conquest? This proclamation being sent out in the manner mentioned, was not addressed to the Canadians. If it be true, that his Majesty may, according to the principle of law, or pursuant to the history of the law, of this country, universally and uniformly—(there is not an exception to the contrary)—give new laws to the country, in what manner is that to be done?—By an instrument not addressed to them? By an instrument, so far from adding anything to their laws, not mentioning them? But,

it is said, they generally did understand, that such should be their constitution, without reference to them in particular. I wish gentlemen would go back to the proclamation in 1763, and I would ask them from what expression it is, that either the Canadians can discover or English lawyers advance, that the laws of Canada were all absolutely repealed, and that a new system of justice, as well as a new system of constitution, was by that instrument introduced. Sir, the consequence of that proclamation was, that commissions were granted to the governor, in the manner they were granted to the governor of New York on a former occasion. The difference between the establishment of New York and the establishment of Canada was, as the difference of 1,700 and 120,000. It is true, there was likewise a commission of admiralty given in the English form; and a variety of other articles, known to antiquarians, not known in Canada. There was also a commission of oyer and terminer. The honourable and learned gentleman who spoke last made an objection to repealing all the present existing commissions. I do not know whether it had occurred to him to read the present existing commissions. If it had, I think he would not hesitate much upon repealing them; because the general commissions of oyer and terminer, &c. are temporary. The other commissions are, one to the court of King's Bench, and another to the court of Common Pleas. The commission to the court of King's Bench is to inquire, by the oath of good and lawful men of the country, into all crimes, causes of actions, and upon issue; jumbling together the criminal and civil jurisdiction of the country. They were framed, I believe, in Canada. How they came to be so framed, I cannot imagine. The first thing discovered was, that they were impracticable; not only impracticable with respect to the people, but impracticable with respect to the commissions themselves. The people were so ignorant, not only of the form of our law, but with respect to personal actions, that it was totally impossible to execute them. If any dispute arose, there was no instance of the Canadians



resorting to the English courts of justice; but they referred it among themselves, for among themselves only could they find any idea of what they had been used to. I would ask any gentleman, whether, if the thing had been done according to some men's opinions, they could have afflicted any country with a greater curse, than an intricate system of laws, which they could not understand the terms or meaning of?

With regard to the criminal law of the country, in the first place, it is more simple, in the next place it is more compulsory; so they did, in point of fact, find their own way. The first thing that happened which I recollect in the history of Quebec, was, that the grand jury desired to have all the accounts of the province laid before them; and, in the next place, there were some very laudable, good Protestants among them, who desired that the Popery laws should be carried fully into execution. They lodged a general presentment against all the inhabitants of the colony for being Papists.

With regard to the civil laws, the whole was overturned. In their tenures, when any man found himself wronged by the French laws, he went to an English attorney, to know how to get righted. If wronged by the English laws, he was told, that a proclamation was no law. The consequence was, that the King lost all profit from tenures; and in many other articles, such as transmutation of property, they were unwilling, because they had not the benefit of English laws, to pay any thing to the King.

The state of confusion the country was reduced to, and individuals were reduced to, was beyond all manner of description. In this situation they remained uncorrected during all this compass of time; and now the present bill is upbraided, because it does not adopt a trial by jury, which necessarily includes the form of English actions, in a case where it would be destructive to the peace and happiness of the country. If it would make them happy, undoubtedly let us give them English laws. If the English laws would be a prejudice to them, it would be absurd tyranny and

barbarity to carry over all the laws of this country, by which they would lose the comfort of their property, and in some cases the possession of it. As far as that goes, I consider it merely as a gift of the conqueror to the conquered people, whom he does not mean to treat cruelly. The criminal law stands as in England. I have observed many things exceedingly strong which have, in my poor opinion, prejudiced the Canadians against the bill; but as to the criminal law, it is certainly liable to none of the objections now urged.

The next article is with regard to religion. To take away religion is what nobody wishes. What is to be substituted in the place of it? Why, a general toleration, says my learned friend, without any kind of establishment; or if an establishment, that of the church of England; or that the church of England should at least go *pari passu* with the church of Rome. Taking it in either of those views, I fairly own, I differ very much in opinion with regard to the law of this country. By the first of Elizabeth, I take it that there is no reason whatever, why the Roman Catholic religion should not have been exercised in this country as well as in that: confining it entirely to that act, I know no reason to the contrary. The 37th article of our religion speaks in such language, that the poorest Roman Catholic, who had any sense, might use it just as much as the warmest Protestant; for the language by the act, and article, is only this, that no foreigner whatever should have any jurisdiction, power, or authority within the realm: but there is nothing in the act to prevent a man believing the infallibility of Popery, if he thinks proper to believe it. It may refer to any church in the known world. I take the act of parliament to be purely declaratory of that which is the law—of that which must be the law, in every sovereign state under heaven. Then as to the right of the clergy to their dues; the right of the bishop to his dues—these rights do not extend to his ecclesiastical functions; they extend only to that maintenance which he was possessed of before, and which was

small enough before. In lieu of tithe, there was a thirteenth paid to the clergy. The bishop has always lived in a seminary: the see was not sufficient, in point of effects, to maintain him: but observe in what manner his rights are reserved. They are reserved to be exercised only with relation to such as choose to be Catholics. Nobody is compelled to be a Catholic: they are rather invited not to be Catholics, by having an exemption held out to them. If that be the sufficient performance of the stipulation in the treaty of peace, and if the country is ready to accept of it *eo nomine*, gentlemen should make no objection to it. It is the very least that could have been given either to humanity or justice; considering them as having stipulated for that religion at the time. If I had had to prescribe what was to be given them, I should, instead of stripping the Roman Catholics of their religion, which was the religion of all temporal and all judicial authority, have thought myself bound in conscience and humanity to have allowed the religion, with one degree more of establishment, if it must be called establishment; I mean with one degree more of maintenance than it had before.

The next objection is that which relates to the governor and council. I could wish that those gentlemen who object to the legislature would be pleased to substitute something in the place of it. I have never yet heard the most sanguine of those who desire to assimilate the government of Canada to the constitution of Great Britain say, it is fit to give the Canadians a governor, council, and assembly; but if it is not fit, what kind of government would you reserve for them, preferable to the one chalked out by the bill before us? Do not let us amuse ourselves with aggravating the possible consequences which may befall the wisest constitution in the world. But how is it to be carried into execution? Why, by drawing as many of the Canadians as it is possible to do with safety to the sovereignty of Canada, into that assembly; by making it a somewhat better thing than the form of their present con-

stitution. At present, it consists of a governor and council, with authority to make laws, which do not affect the life or limbs of any person ; in which every law that has been thought necessary has been brought under a doubt, by the form in which the authority is conveyed ; for if they are enabled to make only such laws as do not affect the life or limbs of any person, what law does not come within one of those bounds ? It is meant to give them a more active constitution. It is confessed, on all hands, that this is essentially necessary, and that it is impracticable to put it in the form which other gentlemen seem to wish.

With regard to the question asked by the honourable gentleman, whether this is to be a permanent constitution ? — whether it is wished there should be so rough a form of government established in any English province whatever ? — I can only say, that unless the present government be not only objected to, but the objection so stated as to point out some period of time in which it is fancied to be right to create the assembly which is now confessed to be wrong, I do not see how it would be possible, with the fullest purpose of doing it, to assimilate that constitution, in point of form, to this. But it is to be assimilated by a new clause, to be added to the present bill ! If you were to give them a very short duration of time, every body knows that the same argument against assemblies would go to the short time to be prefixed. If the idea were to make the law to last from period to period, from three years to three years, is that the method of treating the country ? — giving them no hopes of permanence ? But if you do not fix the time, they will not look upon this to be the constitution, nor be anxious to assimilate with it ! When gentlemen apply the word “assimilation” to religion, to law, to civil laws, and to manners, I can easily conceive it is not an undesirable object in policy, that they should be so far assimilated. To a certain degree, I can conceive that the government of the country, under the present constitution, will look upon it to be their duty to assimilate the people in language, man-

ners, and every other respect in which they can be expected to hold a more intimate connexion. But when that assimilation is proposed to be carried into the law-form of the constitution, I cannot conceive the form of the British constitution, as it at stands at present, proper for them. Upon this main principle, you ought to make a repartition of the sovereignty of the country between the King and the people, of whom 558 are to be elected a parliament. On this principle, the sovereignty of this country was intended to reside, and does, in fact, reside there. But do you mean to vest the sovereignty of the province, either by repartition or otherwise, in any other place than in the House of Lords and Commons of Great Britain? Yet, if you follow your assimilating idea, you must do that. I only know that none of the charters intended it. It is impossible for the King to have done it—to have created the sovereign authority of governor, council, and assembly, in any one of the provinces. In point of fact, they have considered themselves, in more views than I wish to draw into debate, masters of the sovereign power. Is their money to be applied to support the British empire? Are their forces to be applied to the support of the British empire? Are they content that the King, Lords, and Commons of Great Britain shall be the judges of the drawing forth of those forces, and the applying of that money to the protection of the British empire? I think I drew a degree of attention and conviction, when I stated it as an absurdity, that the sovereignty of the province should be divided between the governor, council, and assembly; and to be sure it is a grossness,—it is making two allied kingdoms, totally out of our power, to act as a federal union if they please, and if they do not please, to act as an independent country—a federal condition pretty near the condition of the states of Germany. If you do not like that idea, in all the extent, in all the grossness of it, would you create a constitution in such a case which would make it, in fact, the very thing you deny in words?

The next thing that has been said is, that Englishmen carry over their constitution along with them ; and in that respect it is a hard measure to take from them any of the English laws they carry over with them. I no more understand this proposition, especially as applied to the present subject, than I do the former. When the Crown of Great Britain makes a conquest of any foreign established country, if it be true that it is an article of humanity and justice to leave the country in possession of their laws, then, I say, if any English resort to the country, they do not carry the several ideas of laws that are to prevail the moment they go there : it would be just as wise to say, if an Englishman goes to Guernsey, the laws of the city of London were carried over with him. To take the laws as they stand has been allowed ; to act according to those laws, and to be bound by their coercion, is a natural consequence. In this view, I think the bill has done nothing obnoxious. I have no speculative opinions. I would have consulted the French habit to a much greater extent, if it had been for me to have framed the law.

Colonel *Barré*.<sup>(1)</sup>—I do not rise, Sir, to follow the learned gentleman through the course of his argument. I mean to take up as little of the time of the House as possible. I do not flatter myself that any questions I shall take the liberty to ask the gentlemen on the other side of the House are likely to be answered, as those answers were refused to the honourable gentleman near me, and likewise to the learned gentleman on the same bench ; but as I certainly shall give my vote against this bill, I will offer my reasons for so doing, if the House will give me leave, in as short and concise a manner as I am able. The parts of the bill I shall object to are those which relate to the King's proclamation, the establishing the law of France, the establishing the religion of France,

<sup>(1)</sup> Colonel Isaac Barré was, at this time, member for Wycombe. He was dangerously wounded at the taking of Quebec, and, in West's picture of the death of Wolfe, is represented as one of a group of officers collected round the expiring general. Under Lord Chatham's administration, in 1766, he filled the situation of vice-treasurer of Ireland.

and, lastly, Sir, the establishing this new legislative body that is to be formed in the colony.

Sir, the honourable and learned gentleman who spoke last has thought proper to give a short, but very imperfect, and for aught I know, a very incorrect, history of this proclamation. He says it was left in an office; it was left a sketch, and that sketch was unfinished; it was left by one noble lord, and taken up by another, who thought proper to make considerable additions to it. The honourable and learned gentleman seems to be very much displeased with this proclamation. He has reasoned against it in different parts, and stated divers inconveniences in it. I cannot help observing, that the honourable and learned gentleman seems to be more solicitous upon this occasion than the conquered inhabitants of that country, and, in some measure, more than those who have been the conquerors of it. This proclamation, Sir, gave a certain form to the colony. It provided, that the inhabitants should have an assembly, as well as all the other royal governments, as soon as possible. The proclamation held out this language, that "until such assemblies could be called, all persons inhabiting in, or resorting to, the said colonies, might confide in the royal protection for the enjoyment of the benefit of the laws of England." Under this proclamation, thus held out as a solemn act to the people of that country, many Englishmen went, and settled in the heart of Canada: but their rights, their privileges, were not thought worthy of the honourable and learned gentleman's consideration; he stood up only in defence of the Canadians: but there is a very considerable number of men, no matter of what description—they may have been poor bankrupts, but they are English subjects, who have settled there under the faith of this proclamation. The honourable and learned gentleman was not precise in stating the limits of our colonies. He seemed unwilling for the House to think that any one of the colonies, especially Pennsylvania and Virginia, had a right to settle beyond the Endless Mountains; as if the honourable and learned gentleman could be ignorant of the

fact, that many thousands of English subjects are established some hundred miles beyond the Endless Mountains, upon the very spot which you are now going to make a part of this country of Canada.

Sir, with respect to the Canadians themselves, the learned gentleman asks—what would you do with them? would you do the cruelest thing that ever was done to any conquered nation upon earth? would you take away their laws, their customs? Now, Sir, I never yet knew it was found a grievance to any nation, to give them the English laws, the English constitution. So far from it, the Canadians admired and revered those laws, as far as they could be made acquainted with them. If it is doubted, I have an evidence to produce—the honourable and learned gentleman himself. He says, “what did they do when their grand jury met? they called for their accounts, the public accounts. They likewise wished to put in execution the Popery laws.” Could there be any stronger proof in the world, that they knew the value of those laws? The criminal laws you have thought proper to give them; but you have not given them all. To my certain knowledge, they wish to have the Habeas Corpus. You have retained the civil law. What you will afterwards do to get the law administered, is to me incomprehensible. The civil law of the country stands founded upon what is called the custom of Paris. Thirty folio volumes of that custom those learned gentlemen are to make themselves masters of, and lay open to you, instead of making the English law the basis of their constitution. If any customs, or any particular laws, are applicable to the people of that country, take those customs and laws, and graft them upon the law you give them. Mr. Maseres has stated his opinion to you. It is in the hands of the public: but you have not followed his advice. My honourable friend wishes an establishment of a different kind: others think the establishing such a government as this is right. One law of inheritance the Canadians complain of: the court of France has complained of it, and once attempted to correct it. It is



that which the learned gentleman knows to be a custom with them; namely, the quantum taken for the crown upon the alienation of any estate; they wish to get rid of that. In short, if you had led them with any address, by degrees they would have received great part of the English law: they would have hugged it to their bosoms; they would, from time to time, have abolished stated customs, and, by this time, you would have assimilated them to your constitution, and not left them standing single, as Catholics, under an arbitrary power.

Another thing I wish to notice. Has there been any application from the country? any complaint of all this chaos which the honourable gentleman has complained of? No: there is no complaint. The principal people of the country are of a very particular cast; they take a liking—this I know to be the fact—they take a liking to assemblies; they think they have as good a right to have assemblies as any other colony on the continent. It is strange, if they like this constitution, that you will not give them all the benefit and advantage of it. They ask for it; and when I say they ask for it, I do not mean to say that they have made any application in form to the court here, but they have stated their wishes to the governor there. Why not let them have assemblies? But it is said, they are not ripe for assemblies! Government has, to be sure, made use of the same argument to induce them to drop that idea. It was said, “Don’t you see very plainly, that the colonies upon the continent have all of them assemblies? Don’t you see they are quarrelling with their King? If you have an assembly, you will probably be in the same situation.” Now, a quarrel with their King, to the Canadians, is reckoned worse than any vengeance that can be poured upon them. They will not hear of any thing that would put them upon bad terms with their King. The method that I should have thought most natural, is the method recommended by Mr. Maseres, which was, by degrees to introduce what is proper in your laws, and to let what is proper in the French laws remain with them.

You have determined to establish, by this bill, the Roman Catholic religion : by this bill the Roman Catholic religion has its establishment. Sir, it is very singular how this poor Roman Catholic religion has been treated : in Maryland it has been tolerated, in Ireland persecuted, in Canada you choose to give it an establishment. I do not mean to say you ought to strike at their religion. I think you ought to give it them within certain bounds.

The next thing I shall consider, is the extent you have given to this province. One would imagine there was some secret purpose in this business, which has not yet come out ; and I exceedingly suspect there was, but I shall not touch upon it ; “ sufficient for the day is the evil thereof.” But I cannot find out, from any thing the noble lord has said, or from any thing the learned gentleman has said, why this country should take this wonderful shape. The learned gentleman near me has put sundry pertinent questions, which have not been answered. What my opinion is, I will state as shortly as I can. You would not take the shape given to Canada by the proclamation ; you wish it to go further. It was, says the noble lord, necessary to take in, and to annex, the scattered posts in the neighbourhood of Détroit and Lake Michigan. If the noble lord will be so good as to look at the map, he will find he could have taken in every one of those posts, and never thrown out any doubt about the shape of Canada ; at the same time that all that part between the lake and the Ohio would have been kept out by this bill ; and all the purposes of the bill, except the reference to settling upon the Ohio, would have been answered by his taking that boundary. If there had been any doubt, what would have removed that doubt would have been looking at the course pursued between the English and French negociators, when the French offered to withdraw from that part of the country which they had taken possession of on the south of the Ohio, and retire to the north side, making that river the boundary of the colony. The English ministers said : “ No ; we will not submit to those terms ; they are not the boundaries ;

the river St. Lawrence and the lakes are our boundary ; we will agree to no other." Their language now is : " the river St. Lawrence is the centre, not the frontier ; we will not be deprived of our property in the country." And yet the noble lord has thought proper to take this shape of the country, which may, as the learned gentleman has observed, upon some subsequent occasion, prove a very strong argument in negotiating, when perhaps the success of our arms is not so favourable : your own act of parliament will be stated against you, as fixing the limits of Canada. As to the eastern boundary, we are totally left in the dark. I cannot, for one, make sense of it. No one gentleman has thought proper to answer, why the noble lord has taken this sweep for North America. He runs a frontier at the back of almost all our capital settlements : but why Canada should go so close to all our frontiers, leaving the English "slavery" behind them, I cannot conceive. I suspect something behind which has not yet come out.

The next thing I shall take the liberty to mention is, that this council, chosen by the governor, is to be suspended, and removable by him. It has been said, you have taken no measure to make a quorum, to say what is a board : but give me leave to tell you, from my friends, the Canadians, that the governor may summon every one of those persons, or seventeen of them ; and yet he may give them to understand he does not wish to see them. In that case, not a man to whom such a hint was given would dare to show himself : to be well at court, with them, is every thing, and the court is at present the governor. I do not mean to say, that such a thing is likely to arise from the conduct of the governor there ; but I have more apprehension from a wicked measure when I see an honest man is put at the head of it. I should be less alarmed at seeing this measure proposed, if he were recalled, and an unprincipled man placed at the head. This last proposition alarms me the more, because the noble lord declares, and some other gentlemen say the same, that this bill is to be perpetual. A

learned gentleman near me wishes it to be temporary. Now, if there is any part of the bill that ought to be temporary, it is this ; and with respect to the law of Canada, with respect to the religion of Canada, they are two very important matters. It is not very easy to make a change in the establishment of them. With respect to religion, it is impossible to do it ; but with respect to this arbitrary power it is possible, unless you mean to say, they shall be slaves to the end of time. Though you have taken great pains to defeat the purpose of settlers, yet if the Canadians should give up their conscience a little, and accept of your religion, which is possible as many English are settled there, and you should wish to give them a legislature, by making this bill perpetual you never can do it. I may be told, that the committee is the properest stage in which to discuss the bill. Certainly, we are now not a full house ; but perhaps not half the present number of members may be here next day this bill is taken into consideration ; and for that reason I throw out these observations. I am afraid I have detained the house too long. I have stated, very loosely, the objections I have to the bill. I have more to urge, but I do not choose to mention them in so thin a house. One thing I would say—that I look upon this measure as bad in itself, and as leading to something worse ; that I foresee it will not contribute to the peace of the country for which it is intended ; and that it carries in its breast something that squints and looks dangerous to the inhabitants of our other colonies in that country. Foreseeing this, and looking upon the measure in itself as a very dangerous one, I shall give my hearty negative to it in this stage.

Lord *John Cavendish*.—The honourable and learned gentleman who spoke the last but one, seems to lay great stress upon the propriety of our passing this bill, from the ill effects flowing from the proclamation, and from the ill state of the colony from that time to this. Sir, it is rather a reproach to administration, that the country has been so long in that state. It is seven years since the House of

Lords came to a resolution, that it was necessary to do something.<sup>(1)</sup> I have often seen this house the parent of wrong under such circumstances:—from the necessity of doing something, they argue the necessity of doing wrong. That something should be settled, I agree; but this something should be settled with as tender a view to the inhabitants of that country, as possible. It is shocking to think of a hundred thousand persons transferred like deer in a park. At the same time, I would look forward to the future state of the colony: I would assimilate them as much as possible, that they might become fitter subjects of Great Britain. For that reason, I should think it material not to give them directly their own law again: it keeps up that perpetual dependance upon their ancient laws and customs, which will ever make us a distinct people; and though you should in general find people knowing in French law, there is little likelihood of their being sufficiently so, for the purpose for which they are sent.

I come now to the main point of the bill; the point which I look upon with a particular dislike, namely, the making it perpetual. I think by consenting to this we disgrace ourselves. A measure of this sort ought to be temporary, because it should force itself under consideration from time to time. I have read some papers drawn up by order of the board of trade. There were plans made out, fitting a little of that constitution to this, on which there was a report of the law officers and governor of the colony. Even if they meet with no ill treatment, a people acquired by conquest, and differing in language and religion from the conquerors, will naturally be suspicious. It should be our policy to create a feeling the contrary of this. The bill ought to be temporary, that it may be remodelled by degrees. It is the duty of the

(<sup>1</sup>) On the 2d of June 1767, the House of Lords, being in a committee, resolved, on the motion of the Duke of Richmond, "That it appears to this committee, that the province of Quebec, for a considerable time past, has wanted, and does now stand in need of, further regulations and provisions, relating to its civil government and religious establishment."

servants of the crown to examine it with attention ; to do a little at a time, and never unnecessarily to employ the strong hand of power ; which will defeat its own object, and prevent the Canadians from becoming the good subjects they would otherwise be.

Mr. Serjeant *Glynn*.<sup>(1)</sup>—I beg leave to take up a little of the time of the House, while I state my objections to the present bill ; which I am confident you never can make a good one. You are incompetent to decide upon the limits of the country, or whether the description of it in the bill is most conformable to the claim of the French, or to our claim before the war : but I shall take it as I find it stated on both sides of the House, namely,—that there is to be a newly erected province, comprehending a great part of North America, partly inhabited, partly uninhabited ; that such parts are to be erected into a province, in hopes that the population will increase, and that all those parts of it will, by degrees, become peopled. The bill then proceeds to prescribe a law for the government of this province. In settling that law and that government, under which the inhabitants of this province are hereafter to live, the laws of France and the rules of the administration of justice of that kingdom, are established ; and a countenance is given to the Roman Catholic religion, as far as the law takes notice of any religion, by making a direct provision for it. That is the only religion that receives countenance and protection. The Protestant religion is left to shelter itself under such regulations as hereafter may be found necessary for the due exercise of it ; and this is done in a tract of country, where many of the subjects of this kingdom now reside, in full confidence that they carried with them their birthright, the laws of this country, and that they should continue to be governed by them, as long as they continued

(<sup>1</sup>) Mr. Serjeant Glynn was, at this time, one of the members for Middlesex, and recorder of the city of London. Lord Chatham, in a letter to Mr. Calcraft, describes him as being “a most ingenious, solid, pleasing man, and the spirit of the constitution itself.”—*Correspondence*, vol. iii. p. 483.

to live in that country: but now they are to be told, that they must learn French laws; that they, for the future, are to receive justice from the mouth of a French judge; and that all disputes that may arise are not to be determined by the rules of that law to which they have been accustomed, but by the rules of the French law.

Sir, the learned gentleman who spoke lately, has laid down many positions. From the best attention I could give to them, I am at a loss to say whether I concur in opinion with him or no; but, with regard to the topic which the learned gentleman has more particularly dwelt upon, I will venture to give my opinion. The learned gentleman says, that all acquisitions made in war become the acquisitions of the state; that they are subject to the supreme power of this kingdom, the King, Lords, and Commons. In that position, I have not the least hesitation to concur with the learned gentleman; but, when he proceeds to state what is the condition of a conquered country, I cannot agree with him to the extent in which he lays down his doctrine. I have always understood this to be the condition of the conquered country, that before new rules are prescribed for the administration of justice, they are not to be left unprotected; that whether they are to retain their own laws, and for what time they shall continue under the old laws before new ones are introduced into the country, is in the breast of the conqueror: that the King has no absolute power to prescribe what set of laws or what form of government he pleases, but that he may, if he thinks proper, when the time comes to make it expedient that the inhabitants of the conquered country should be united with the rest of his subjects, determine then that the old laws should have an end, and that they should be governed by the laws of England. The privilege goes no further. The King has no power to prescribe other laws; and I am persuaded the learned gentleman, in any situation, would never advise the government to make the experiment. He says, the laws improper to be given to them, are the laws of this country;

and he proceeds to describe the misery, the confusion, the unhappiness that attends a conquered people, when they are compelled to receive a new system of laws. The introducing of new laws must certainly be a temporary evil, although in the end a permanent benefit. In this I fully agree; but it has ever been maintained in civilized times, and in the history of all kingdoms, that in cases of conquest, whenever it has been decided to retain those conquests, the laws of the conqueror have been introduced. In proof of this, I need only instance the two nations that are so happily united with this country. I mean the Irish and Welsh. They were subdued; they receive the laws of the conqueror to this day—and to this they are indebted for all the happiness they enjoy. That, therefore, is an answer to all the learned gentleman has said with regard to the great inconvenience attending the introduction of those laws.

The learned gentleman next takes notice of the proclamation that was issued in 1763; and he speaks of it as a very incorrect and imperfect document. He says it was not personally avowed. It was, however, the act of the Crown, and as far as it was within the limits of the prerogative, it must have its operation; it must have its effect. What, then, Sir, is that effect that it should have? The King therein declares, that the Canadians shall no longer continue a French people, governed by their ancient laws; but that it is his will and pleasure, that the laws of England shall be substituted in their stead; thereby holding out to such English subjects as might be inclined to emigrate thither, a full assurance, that they would carry with them the laws of this country. Now, Sir, with regard to the Canadians, it was plain that such a measure would, in the end, be for their advantage; but with regard to the people of this country, who, in confidence of the royal word, have gone there to settle, it inflicts the cruelest injury the hand of power ever inflicted, in taking from them the laws of their country. They therefore insist upon the rights secured to them by the laws of this country, as well as by the royal



proclamation. As for the ancient inhabitants, the new subjects, they have no right to complain, seeing that they have been treated as all conquered people have been, who have been treated with the greatest kindness and lenity; and who, in consequence of such kindness and lenity, have reaped a great national advantage: but the other party, if this bill passes into a law, may with reason complain of the violation of public faith, in the most essential of all points. With regard to the law by which the Canadians are to be governed, it is said, that the criminal law of England is to be continued in the province; and the learned gentleman, in his remarks upon the inconvenience of introducing new laws, might have extended his compassion to the old inhabitants of Canada. With respect to the introduction of the civil law of Canada, in all matters of controversy relative to property and civil rights, it cannot be consonant with the rights of the English inhabitants to leave them without that security which the laws of this country have provided for the protection of personal liberty. But if the laws of the country are to be changed, the next thing to be considered is, what is the legislature that is to be given it? The English inhabitants will now have to learn the French law, to consult French lawyers in every question connected with property and personal safety. The noble lord says, that this was the only system of legislature that could possibly be provided for the country. Now, if this be so, I am certain it is of itself a sufficient argument for our stopping here, and leaving the Canadians in the condition they are now in; for I am sure that condition cannot possibly be worse than this bill will make it. But what, Sir, is the form of the legislature provided for those countries? An absolute form; a governor, assisted by a council of twenty-three, who may be removed at his pleasure. It is false to give it any colour of distinction of laws, when it is to be made by the personal authority of the governor. It is evident, whatever his will and pleasure may be, that he will find a ready submission thereto; that he will find, from this

nominal legislature, no check to the passing of any laws that he may set his heart upon passing. Considering, therefore, Sir, that the laws about to be given to the Canadians are the French laws; that the religion, as far as it becomes a subject of legal attention, is to be the Roman Catholic religion; that the Protestant religion is no otherwise taken notice of than as being one that ought to be tolerated; and that, whatever the disposition of the governor from whom they receive those laws may be, the government itself will be as absolute as any King of France could make it, and that without an irresistible necessity,—I am persuaded, that no gentleman, who carefully attends to the subject, and reflects upon the consequences, can, as a friend to the British constitution, give his consent to the bill now before us. In times past, a minister of the Crown was censured for proposing an arbitrary form of government for the colonies. However objectionable that proposed form of government may have been, we do not find that the powers given to the governor on that occasion were so extensive as those vested in him by this measure. The principles which prevailed in the days of Charles the Second will not, I trust, receive the sanction of the legislature of the present day.<sup>(1)</sup>

*The Solicitor-General.*<sup>(2)</sup>—Sir, in this stage of the business the only question before the House is that which relates to the second reading of this bill; against which only two objections have been raised, which resolve themselves into this—that we must either have no act, or regulate the subject of

(<sup>1</sup>) It was one of the articles of high treason exhibited, in 1667, against the Earl of Clarendon, “that he had introduced an arbitrary government in his Majesty’s foreign plantations, and had caused such as complained thereof, before his Majesty in council, to be long imprisoned for so doing.”

(<sup>2</sup>) Alexander Wedderburn. He was appointed solicitor-general in 1771, and held the office till 1778, when he was advanced to that of attorney-general; and, in 1780, was made chief justice of the court of common pleas, and raised to the peerage by the title of Baron Loughborough: in 1793, he was appointed lord chancellor, which high situation he held till 1801, when he was created Earl of Rosslyn. He died in 1805.

that which is before the House. It is in vain to object totally to the plan proposed, without stating the outline of one which it would be right to substitute in the place of it. Most of the objections are partial objections to particular parts of the bill, which it will be the business of the committee to consider particularly: many may be easily corrected by the attention which gentlemen will give to the bill in the progress of it. With regard to the proposed line of territory, if it should turn out to be incorrect, the committee can correct it; if wrong, in point of largeness, that also it will be the business of the committee to set right. I should not, Sir, have troubled the House, in the present stage of the bill, if something had not dropped in the course of the debate, and particularly from the learned gentleman who spoke last, from which I totally dissent, and differ in principle. With respect to the government of the country, the first question is, what is the extent of the right? The learned gentleman says, that the right of the conquering nation, generally and indefinitely, is, to give the laws of the conqueror to the conquered; that if that constitution was immediately adopted, the conquered people would have no right to complain; and he maintains, that, with regard to this country in particular, such has been the policy, and such ought to be the policy. That such has been the policy of one very great country, I certainly admit. It was the avowed policy of the Roman republic; but, with that exception, that single exception, which arose entirely from the particular frame of that country, and the genius of that people, there is not another country, civil or barbarous, on the face of the earth, that has adopted the principle.

Having said this so confidently, the House will expect that I should apply myself to those instances in which England has acted upon that principle, with regard to the countries conquered by our arms. The supposed cases are those of Ireland and Wales. Sir, with respect to Ireland, the first settlement of the English arms was in the reign of Henry the Second; from which time to that of James the First, a

very small part was subject to the law of England. The law of England prevailed within the English pale, but no farther. The original constitution and customs of the Irish, as founded in the reign of Henry the Second, continued to be the general law until after Tyrone's rebellion; when the law of England was extended, and judges were appointed in different parts of Ireland, and the ancient Irish customs and laws were abolished. At that period, and at no earlier period, can it be said that Ireland was governed by English laws.—Now, Sir, as to Wales; from the time of Edward the First to that of Henry the Eighth, the customs of Wales governed Wales. It cannot be said, that until the time of Henry the Eighth, the English laws were introduced. But not only are there instances of great states that have not considered themselves warranted, by right of conquest, in forcing their laws upon the conquered, even countries that have scarcely any trace of public laws and general systems, have had more policy, with regard to the countries they have made themselves masters of. The very Mussulman, the Ottoman, the Turks, the worst of all conquerors, in the countries they subdued, left the people in possession of their municipal laws. That is the case of Wallachia; that is the case of Moldavia; that is the case with all the great settlements in which the Turks have pushed their arms. Those settlements have a governor of the country to preserve the religion of the country and the manners of the country, appointed by the authority of the court; but they are governed according to their own laws and customs. If one reads the history of those countries, can anything be more plain? Unless you hold the principle, that you may enforce the slavery of the people conquered, and that, because you have a right to kill (which is not true, for that extends no further than the immediate heat of action) —if you save life, you may dispose of it as you please, there is no other ground upon which that doctrine can stand. You can preserve the acquisitions in time of peace, so as to give to the country subdued as much tranquillity,

as much property, and as much enjoyment of that property, as is consistent with your own safety ; and this, it is your duty to do. The principles of humanity, the principles of natural justice, demand this at our hands, as a recompense for the evils of war ; and not that we should aggravate those evils, by a total subversion of all those particular forms and habits, to which the conquered party have been for ages attached. Upon this principle, Sir, I do maintain, that it would have been most unjust to have relapsed into the barbarity of former ages ; and this we should have done if we had, with a rough stroke, said to the Canadians, that the laws of Canada should be totally obliterated ; that the rights, civil and ecclesiastical, of that country should be framed according to the model of those of England, as being better for that people than their own. It would have sounded somewhat harsh to have told the Canadians, " You are easy with regard to the law of property, but your municipal law is bad, you shall have a much better—the law of England ; that is better for you than the law to which you have been accustomed." This, no doubt, the eldest son would have been glad to hear ; but as many men in Canada have younger sons, those younger sons would have found themselves bereaved of all property. So that, because that law of property is adopted here, you would, in a country where it has not yet prevailed, render about four-fifths of the people destitute of any maintenance whatever. For these reasons, I cannot think the construction put upon the proclamation a very wise one. When the new law was to have stripped them of all they had, they could not hug themselves in the idea that they were to have a better law given them than they had before.

It has been said, that this bill has been brought in without any application on the part of the Canadians ; that they have never petitioned for it ; that they have never expressed the least dissatisfaction. I am astonished, Sir, that this should fall from gentlemen, who certainly have had many opportunities of knowing what has been the feeling of the people of

Canada for several years past. I believe I do not assert too much when I say, that a single year has not elapsed since the proclamation, in which the people of Canada have not intreated of government to take the state of Canada under its consideration. We are also told, that it is a reproach to the administration, that the matter should have been so long delayed ; but, Sir, although we are only in the year 1774 proceeding to bring this important subject before the consideration of the legislature, I believe I should tax unjustly, not only the present, but former administrations, if I supposed that that delay had been owing to neglect. On the contrary, I believe it has been a subject of much anxiety and solicitude with all administrations, to give a proper measure of relief to the Canadians. I think that measure might have been introduced somewhat sooner, and yet I am not surprised it should have taken up so much time. First of all, Sir, it was necessary to have full information, to contrast the different views of the different parties, and from the result of that examination, to frame something that might be the most free from objection. I am not astonished that objections should be made to the plan now proposed. I should have been more astonished, if by any combination of views and opinions, a plan had been formed that would not have been liable to many objections. I have myself bestowed a great deal of time, and much diligence and pains, in striving to make myself master of the question. I have gone over a great variety of papers, perhaps to the extent of a folio volume. I have formed a variety of plans ; but have hardly formed one, to which I had not some objection. If I had been compelled to have proposed my views upon the subject, perhaps they would not have been the views of the present bill : yet, I am sure I should be guilty of an unwarrantable presumption, if I thought the views of the present bill wrong, because they differ from those which I had formed. Gentlemen who have considered the subject but slightly, may regard it with partiality ; those who have considered it deeply, must contemplate it with diffidence. I

confess, upon a perusal of this bill, that none of the leading views embraced in it appear to me in any degree complete.

With regard, Sir, to the great point of religion, I believe I should do an injustice if I attributed to any gentleman a desire to convert the Canadians, by an act of force, to the Protestant faith. However desirable it may be, that there should be a conformity of opinion, I do not believe there are any gentlemen in this House who wish to effect the conversion of the Canadians, in any way but by the force of persuasion and conviction. Is the Roman Catholic religion made the essential article of this bill? I can see, by the article of this bill, no more than a toleration. The toleration, such as it is, is subject to the King's supremacy, as declared and established by the act of the first of Queen Elizabeth. Whatever necessity there may be for the establishment of ecclesiastical persons, it is certain they can derive no authority from the see of Rome, without directly offending against this act. That the bishop may ordain priests, and that he may dispense with marriages of cousins german, nobody will have the least objection. If the Catholic religion is to remain, the bishops must ordain priests: the worship cannot exist without priests; and there cannot be priests without bishops; unless you will permit missionaries to go from other countries to fill the cures in Canada. Of the alternative, which is the most politic?—that the priests should be bred in the country, or that the Franciscans or Dominicans should go over, and you of necessity be obliged to connive at their so doing? But then it is complained, that these clergy are to be allowed to hold, receive, and enjoy their accustomed dues and rights. What, Sir, would you tolerate their religion, and tell them, at the same time, that they shall have no priests? or would you have these priests subsist upon the casual benefactions of individuals? Is it not better that they should subsist under the authority of the state, than that these priests, who so zealously endeavour to gain an empire over the minds of the people, should be placed in a state of dependence on them for their main-

tenance? And further, Sir, is not all this indulgence given subject to his Majesty's approbation, and not that of any Canadian authority? and is it not provided, that nothing contained in the act shall disable his Majesty from making a provision out of the rest of the accustomed dues and rights for the Protestant clergy, in such manner as he may from time to time think necessary and expedient? So that all their tithes are subject to be taken from them, as affirmed, for a Protestant clergy. I should suspect, that the Canadians' objection would be, that this provision defeats such a re-establishment of priests as they expected from the former part of the bill; and I am sure it would be perfectly ridiculous to make a fund for the establishing of the Protestant religion, especially as there is not any great number of Protestant clergy in the country.

With regard to the civil and criminal law established by this bill, I have no difficulty to say, that the criminal law there established ought to be the law of England. I would not have compelled the Canadians to adopt the criminal law, if they had found it a hardship. I have not a doubt of the preference of either of the two codes of laws being in favour of the English. I should think it would be so in theory, and I am confirmed in my opinion by the testimony of those gentlemen who are best acquainted with the state of Canada. I speak from the best authority, from that of the chief justice. What does he say? That the Canadians are fully sensible of the benefit of the criminal law, and that they would prefer it to the returning to the criminal law under which they lived. If we change their laws, where it is clearly for their advantage, and they are sensible of that advantage, we repair, in some measure, the evil of conquest; and this we have done, by the boon we have given them in this part of the bill. It is similar to that instance which Montesquieu quotes, of the demands of the conquering nation, that the vanquished should abolish the custom of exposing their children; which, he says, is one of the finest exercises of the power of the conquering over the



conquered nation, that was ever heard of. I have no doubt the Canadians will be fully sensible of the benefits of the proposed change, and will not complain that they are subject to the English criminal law, which is mild in its punishment, and certain in its description of the offence.

With regard, Sir, to the civil law, at present to effect a change in that law, would be to deprive the Canadians of that property which they are entitled to enjoy. In civil cases, until they shall have adopted ideas very different from those which they at present entertain, certainly the trial by jury would be no blessing to them. To alter long-established habits, to create a more manly course of thinking, to make the Canadians competent judges in civil matters, must be the work of time. Individuals bred up in a country where trial by jury does not prevail, would find it very difficult to exercise the office of a jurymen. They would consider it a hardship, instead of accepting it as a benefit. The introduction of it must, I repeat, be the work of time. I consider the assembly as sitting to make experiments, for the purpose of bringing the country as much as possible into that mode of living, and into those sentiments of cordiality with the Government, which the nature and habits of the people will admit. I assuredly think it desirable that they should acquire the mode of thinking of British subjects, and be brought, as much as possible, to adopt British manners; but if you alter their laws, it will be difficult to produce this change; if you alter their manners, it will be still more difficult. You must not seek to attempt it by any violent or sudden alteration; if you do, you put off the wished-for event to a greater distance, than if you suffered things to take their own course.

Another objection has been urged against the measure, which more properly belongs to the committee; namely, that there is no clause in the bill to make its operation temporary. Now, Sir, I consider this bill, in its nature, to be temporary. A bill of this kind cannot but be temporary, because it is a bill of experiment. As to how far it is adapted to the wants of that country, gentlemen differ;

but I think it will bring the Canadians much more to the resemblance of British subjects than they are at present. Gentlemen who oppose this measure have not attended to two points. In the first place, will it secure the law of Canada as to civil rights? With respect to this, it makes two material alterations; one, that the property of the state may be devised by will, the other, that all land given by his Majesty may be held in fee and common soccage. By these means, those lands will henceforward be held by the law of England; and no doubt the people will avail themselves of the power of devising, which that law gives them; which will bring the estate, of course, to the eldest son. This will bring them nearer to the general laws of England. But should the Canadians not be inclined to receive these alterations, they will have very little effect. I consider, therefore, this bill essentially a temporary one; but I shall be against any clause to make it so. In the first place, for what period would you take it? If for any period, it would have this bad effect with regard to the Canadians; it would hold out to them a period, when it would cease to operate, and it would induce them to be stirring up objections against it during all the term that you permitted it to be in force. If you take a long period, the effect will be the same as if it were made perpetual; if a short one, it is merely an experiment. And let me only remind gentlemen of the difficulty of fixing the period.

I have hitherto, Sir, in all I have said, considered the Canadian inhabitants as the objects of the legislature. A great deal has been said with regard to the British subjects settled in Canada. Now, I confess, that the situation of the British settler is not the principal object of my attention. I do not wish to see Canada draw from this country any considerable number of her inhabitants. I think there ought to be no temptation held out to the subjects of England to quit their native soil, to increase colonies at the expence of this country. If persons have gone thither in the course of trade, they have gone without any intention of

making it their permanent residence ; and, in that case, it is no more a hardship to tell them, "this is the law of the land," than it would be to say so to a man whose affairs induced him to establish himself in Guernsey, or in any other part of North America. With regard to the English who have settled there, their number is very few. They are attached to the country either in point of commercial interest, or they are attached to it from the situations they hold under government. It is one object of this measure, that these persons should not settle in Canada. The subjects of this country, in Holland, in the Baltic, and in different parts of the world, where they may go to push their commercial views, look upon England as their home ; and it should be our care to keep alive in their breasts this attachment to their native soil. With regard to the other portion of the inhabitants of North America, I think the consideration alters ; if the geographical limits are rightly stated. I think one great advantage of the extension of territory is this, that they will have little temptation to stretch themselves northward. I would not say, "cross the Ohio, you will find the Utopia of some great and mighty empire." I would say, "this is the border, beyond which, for the advantage of the whole empire, you shall not extend yourselves." It is a regular government ; and that government will have authority to make enquiry into the views of native adventurers. As to British subjects within the limits, I believe there are not five in the whole country. I think this limitation of the boundary will be a better mode, than any restriction laid upon government. In the grant of lands, we ought to confine the inhabitants to keep them, according to the ancient policy of the country, along the line of the sea and river. Upon these grounds, Sir, I think this bill ought to go to the committee. I do trust that that committee will, at least, be as well attended as this House. The project is one that deserves most serious consideration ; and I am satisfied it will be the endeavour of gentlemen to make it as perfect as possible.

Mr. Serjeant *Glynn*.—I beg leave to set myself right in the opinion of the House. I am charged with having very rashly quoted a piece of history, and given it a construction directly contrary to the true meaning. As the learned gentleman has not put the House in possession of the authority, I will. Lord Coke, in his fourth Institute, says, that upon the conquest of Ireland by King John, the English laws were given. The learned gentleman is correct in this observation, that the unconquered Irish received the laws of England only gradually, as the English arms prevailed. The Irish history, as written by Leland, says, the country was reduced into the form of English counties, had English ministers of justice, and was then governed by the English laws. Certainly, a part of the country was not totally conquered until the time the learned gentleman speaks of. Though homage was received—though their laws were reprobated—for they were called lewd customs, not laws—yet it was impossible for the English to teach them better, until they were in direct subjection. With regard to Wales, the learned gentleman is much more correct in his observation. The Welsh did not receive the English laws immediately upon their conquest. The miserable state of the people of that country then, their happy state now, and the strength this country receives from them, shew how politic a step it was to give them the English laws. From that time, they became good subjects, whereas before they were not. In quoting history, I meant no more than this, that it was a wise and just policy, and had been proved to be expedient, that there should be similar laws, and those laws received by the conquered. By the present bill the Protestant religion is not sufficiently provided for. There is every thing that gives encouragement to make proselytes, and alterations in favour of the Roman Catholic religion; and it is at least silent with regard to the Protestant. The learned gentleman says, it is in the power of the Crown to provide endowments for the Protestant clergy, by depriving the Roman Catholic clergy of their possessions. It is a right

that is to be established, which cannot, under such savings as that, be taken away. I am confident I shall not be contradicted in this.

The *Solicitor-General*.—My authority is Sir John Davis's State of Ireland, which I take to be a more correct one than Lord Coke's, in his fourth Institute. Having happened to read Leland's History lately, I should have drawn the same conclusion, particularly from the notes. I shall only add, with regard to the proviso for the Protestant clergy, that I believe the learned gentleman will find it as extensive as the grant to the clergy of the church of Rome; if it is to be taken as a grant.

Mr. *Charles Fox*.<sup>(1)</sup>—I rise, Sir, merely to state one objection to this bill; and, if it is allowed to be an objection, it is a fatal one. The bill says, that the clergy of the church of Rome "may hold, receive, and enjoy their accustomed dues and rights, with respect to such persons only as shall profess the said religion." Now, Sir, by holding and enjoying such dues, I understand is meant the receiving of tithes; and I want to know, how far that differs from a tax. Are they entitled now to a tax? The bill says, no; but they may hold and enjoy tithes; which is, to all intents and purposes, a tax upon the people of Canada. Taxation and legislation—we understand that distinction well; but we have not given the Canadians credit for understanding it as well. I cannot suppose that the House will agree to a second reading of the bill, until some member shall have explained to us, that this House is not laying a tax. Until that is explained, I will not enter into the merits of the bill.

The *Attorney-General*.—This tax consists partly of the lands belonging to the Popish clergy, under former kings.

(<sup>1</sup>) This great orator and statesman had, at this time, just completed his twenty-fifth year. He took his seat in the House of Commons, for Midhurst, in May 1768, before he was of age: in February 1770, he was appointed a lord of the admiralty, and in 1773, a lord of the treasury; which situation he had resigned only fourteen days previous to this debate.

It consists of tithes then in possession. It was first of all laid before the English authorities, when it was stipulated that they should remain. That stipulation was confirmed by the House of Commons, when the definitive treaty of peace was concluded;<sup>(1)</sup> and they have been in possession down to the present time. All that this bill provides for is, that they shall remain in possession.

Mr. *Charles Fox*.—First of all, Sir, my learned friend has not sufficiently attended to what I said, that I objected as much to the levying of the tax by the House of Lords, as to the tax itself. You know how exceedingly nice we are on this point. My learned friend says, they have been in possession: now, I do not apprehend they could have any legal right, if the proclamation had any force; for that, by the laws of England, the Roman Catholic clergy should be entitled to tithes, is what I cannot comprehend. That the proclamation did not affect Canada, I have not heard my learned friend affirm. The question is, whether this be not literally giving a right to the clergy of that country; whether it be not giving them a right to exact that, which they had not a legal right to exact before this act passed? If so, it is giving a power to raise money; and we never permit bills of this nature to originate in the House of Lords. I think this objection alone fatal to the bill, without going further; but with regard to the measure itself, I will say, that it is not right for this country to originate and establish a constitution, in which there is not a spark or semblance of liberty. A learned gentleman has said, that by this means we should deter our own countrymen from settling there. Now, Sir, as it is my notion, that it is the policy of this country to induce Englishmen to mix as much as possible with

(<sup>1</sup>) By the fourth article of the treaty of 1763, his Britannic Majesty engaged "to grant the liberty of the Catholic religion to the inhabitants of Canada; and to give precise and effectual orders, that his new Roman Catholic subjects might profess the worship of their religion, according to the rites of the Romish church, as far as the laws of Great Britain permitted."

the Canadians, I certainly must come to a different conclusion. Everything that forwards the learned gentleman's end, defeats my view of the subject. The learned gentleman has, too, with great ingenuity, stated the inconvenience in Canada, if we give them our laws with respect to real property. I do not suppose there is any gentleman who would approve of those laws being forced upon them; but the learned gentleman spoke, as if all civil law were comprehended in this kind of relation, which affects the descent of property, the Habeas Corpus, and all other rights. He quoted Montesquieu with approbation, about exposing children, but he says, "I cannot give the Canadians trial by jury; I cannot give them the Habeas Corpus;" which are laws of the same nature, and fully as commendable as those which prevented the exposing of children. I cannot conceive why we should not give them the law of this country. If we gave them that law, it would be easy to alter it in many respects, so as to make it agreeable to them. That, Sir, I conceive it to be the duty of this country to do; and it is very easy to do it: but to go at once, and establish a perfectly despotic government, contrary to the genius and spirit of the British constitution, carries with it the appearance of a love of despotism, and a settled design to enslave the people of America, very unbecoming this country. My idea is, that America is not to be governed by force, but by affection and interest. But the Roman Catholic religion, the learned gentleman says, is not established. According to my notion, the establishment of that religion consists in government paying its teachers; and when the professors of that religion receive tithes, that, I maintain, is establishing a tax. I profess I do not myself object so much to that portion of the bill; because I think the persecution of the Roman Catholics is much to be deprecated, and that the penal laws of this country are repugnant to every principle of toleration. I think there might be, in some part of his Majesty's dominions, an asylum, where Roman Catholics might go, if persecuted.

I still, however, think that this provision has not yet been distinguished from a tax ; that we are now going, for the first time, to levy a tax, brought down from the House of Lords, for the support of a Roman Catholic establishment ; that we are about to levy a tax on the people of Canada, for the support of a religious establishment ; and that we are taking this bill of the House of Lords, when it ought to have originated here. If the Roman Catholic clergy have been in possession of a right to tithes, they must have been in possession of it from the good-will of the people of the country. If they should ever be disposed to sue for their dues, they are now to have a legal right to them, by a bill coming from the House of Lords.

Lord *North*.—I rise merely to say a few words with respect to this obstacle — this insurmountable obstacle. Whatever the proclamation may have done, it certainly did not repeal the definitive treaty. The proclamation gave a free exercise of the Roman Catholic religion, as far as British laws would permit. Great Britain, undoubtedly, would permit that exercise to the extent of this bill ; it would permit, likewise, that in the colonies of America, the Roman Catholic religion might have this provision. But, Sir, what does this act give ? It gives the clergy the enjoyment of their accustomed dues and rights. They must have been there ; they must have had their accustomed dues and rights before. This bill does not originate them ; it gives no rights, it creates no dues. If they had them not before, this bill does not give them. Therefore, if any clergyman, under this bill, should claim his dues, he must shew he had a right to them before. Consequently, what the Lords have sent down to us, is no creation of rights, is no creation of dues. The right subsisted before the House of Lords sent the bill down to us ; and without the House of Lords, it would have still subsisted.

Mr. *Charles Fox*.—If the noble lord means, that the bill will bear this construction—that the Roman Catholic clergy had a right to it before, then I do conceive, under pretence



of regulating Canada, the question will turn upon the force of that proclamation, which will be left to be disputed in Canada; and this bill, which is meant to quiet the Canadians, will leave the subject just where it was. The same ambiguity will remain.

Mr. *Dunning*.—I shall say a few words upon the objection that has been started. It has not met with a proper degree of attention. I take it for granted, that among the privileges of this House, which have from time to time been exercised, this privilege has, for some substantial reason, been thought a privilege worth contending for. I have seen many bills, proper in themselves, to which objections have been taken by the Chair, and they have thereupon been rejected, solely upon the ground of this privilege. It remains, therefore, only to see whether the objection applies to this bill. Now, Sir, no man accustomed to acts of parliament is ignorant that this is to be understood as a custom before the conquest of Canada. To make it out to be a due—to make it out to be a right, under the authority of this bill, it is only necessary to prove, that it was a right they were in the possession of antecedent to the cession. If they have been in the enjoyment of it, but have lost it since, this act must unquestionably give it *de novo*. I should be glad to know, whether my learned friend meant to be understood, that, in point of fact, the Roman Catholic clergy have been in the enjoyment of this right, notwithstanding the proclamation, from the time of the cession to the present hour? If he does so understand it, I shall defer to his authority; but, from the best authority I have been able to collect, it has been determined otherwise. I understand they have not been in possession, nor will they be in possession, until, by this act of parliament, they have a right to claim it. It may be true—that the Roman Catholic clergy, from the Romish communicants, receive such contributions as they are in the humour to pay. They may be superior to the tithe, for this plain reason, that, antecedent to the conquest, they were in possession of the right to tithe from

all the inhabitants. Now, either that right is preserved by the treaty, or it is not. If it is preserved to the extent they had it before, they have then the right to tithe from all the inhabitants, or from none. Clear it is, that neither the definitive treaty, nor the proclamation, draws any such line of distinction between the right of the Roman Catholics and of the Protestants. That they have it not — that they never claimed such tithes—I take leave to assume to be a fact. Now, if an exclusive right of passing bills imposing taxation is claimed by this House, I do not think, literally, that this bill imposes a tax or imposes taxation; but it is a bill that raises money; and the objections go the whole length of militating against a bill raising money. I speak in your memory, Sir, when I state, that in April 1765, a bill imposing no tax, but merely for repealing an act of Queen Anne relating to buying and selling cattle, was rejected, upon the principle of its raising money. Gentlemen may argue, that the present is not a bill of this sort; but it is clearly a bill that raises money—that takes money out of the pockets of British subjects—for these Canadians are British subjects—and, therefore, unquestionably it is a bill that raises money. If we alone possess the privilege of originating money-bills, this is a bill directly in the teeth of it. In what I am offering, I do not wish to be understood as saying, that this is the only objection to the bill. I am not willing to turn the bill round upon this point. If it is to pass, the sooner it passes the better; for, whenever a bad thing is intended, the sooner that bad thing is completed the better, in my apprehension.

Mr. *Dempster*.<sup>(1)</sup>—Sir, an objection has been started, that goes to the foundation of the privileges of this House. Late as the hour is, I shall not make any apology for saying a few words upon the subject. It is clear that this bill

(<sup>1</sup>) Mr. Dempster entered parliament in 1762, and represented the royal burghs of Forfar, &c. for twenty-eight years. He died in 1818, at the age of eighty-six.

intends to alter the situation of the Roman Catholic clergy. They were in possession of the tithe, or they were not. Does this bill impose a tax upon the subject? Sir, it has been the custom, upon these occasions, to refer ourselves to the person who presides in this House, and who is, of course, a proper judge. If I do not mistake, in the course of my observation, I think I have known the person presiding to state this objection to the House. In case it should pass *sub silentio*, I shall, therefore, humbly entreat to hear from you, Sir, whether this is a bill which comes under that construction. An incidental point has been started. Many gentlemen of great abilities have already spoken. Here is a point that has occurred relative to privileges. Now, Sir, I apprehend, that those gentlemen have a right, upon this point having occurred, to speak again; and what is more, being a point relative to the privileges of this House, I apprehend the order as to the number of times a member may speak is not applicable to the present question. The purpose of my rising is, that you, Sir, would resolve the doubt. [A pause.]

Mr. Alderman *Sawbridge*.<sup>(1)</sup>—I do not see you, Sir, inclined to rise upon this occasion. I have, upon former occasions, requested you not to give your opinion, because I thought you ought not to have given it. Upon this occasion, I think it is your duty to do so; and therefore I rise, not to request it as a favour, but to demand it as a right. If the honourable gentleman adheres to it, as I shall, I shall put a question, whether you shall give your opinion or not.

The *Speaker*.<sup>(2)</sup>—I am sorry to be called upon in this manner. It is very unusual to be so called upon. I have frequently seen bills, that have originated in the House of Lords, that I thought ought not to have come to this

(<sup>1</sup>) The alderman, at this time, represented Hythe; but, at the general election in October following, he was chosen one of the members for the city of London, and continued so till his death, in 1793.

(<sup>2</sup>) Sir Fletcher Norton. He was chosen Speaker in 1769, upon the resignation of Sir John Cust, and, in 1782, was created Lord Grantley.

House; and I have pointed it out to the House, that the House might judge upon them. I never have presumed to judge upon them myself. An objection has been stated to the House. The House will determine as they think right. It would be very unbecoming in me to do it.

Mr. *Dempster*.—Sir, what it would be unbecoming in you to do, would be unbecoming in me to ask; I therefore rise to make an apology to you. I have always understood that there is a right to ask the opinion of the Chair; not that I mean to propose it upon this occasion, but I apprehend, if the majority were to appeal to you to give your opinion, that we should hear it. I have not a doubt of it.

The *Speaker*.—The honourable gentleman mistakes me. I did not take it amiss in him, in calling upon me to give my opinion. What I take to be the province of the Chair is this—if there was a doubt, when the fact was decided so and so, whether it came within the privilege of this House, I should give my opinion. Decide the fact. I have no difficulty in saying, if you decide that this is raising money upon the subject, that it comes within the privilege. But am I to decide that fact? The House are in possession of it.

Mr. *T. Townshend*, jun.—I do not rise, after it has been already decided, to give you the trouble of giving your opinion. I did expect to hear it treated a little more seriously than it has been, and not to be laughed at. A bill levying a tax, or repealing a tax, should not be suffered to originate in the House of Lords. I think this is both the one and the other. Had the Roman Catholic clergy a right to any thing by law, or had they not? If they had, you have repealed it: if not, you have granted it. I have heard, from very good authority, that the clergy never dared to sue for their dues. Has any man a doubt, if this act passes, that the Roman Catholic clergy will sue from the Roman Catholic? But will he be restrained from suing from the Protestant? If they are dues, they are due from both. Will

any gentleman tell me, after the passing of this act, whether the Roman Catholic clergy will not exact their dues? I assert, that I have heard from good authority they never durst do it before. I see many gentlemen ready I hope to answer this question, whether they did sue for them before. When that point is established, it is established whether this is raising money from the subject; that is, not raising a tax for the purposes of government, but for other purposes, like the turnpike road bill of April 1771. The mad-house bill, on account of the licence to be paid by the mad-houses, could not pass.

The *Attorney-General*.—I own this is the very first time I ever heard tithe called a tax. I wonder very much, considering it is so plain, that it should not have borne the name of tax long before. I will suppose an exchange, or settlement, about to be established by act of Parliament, of which tithe makes a part—would it set aside the right, that such bill had begun in the House of Lords? In the common case of inclosure bills, is it an objection, that tithes are part of the new settlement? The objection is, that money is to be raised, making a right, and consequently that it must be begun here; but was it ever objected, that tithe could not be begun in the House of Lords? But suppose tithes could be called a tax, to any purpose—gentlemen ask, are they due at this time? have they been, in fact, collected by act of parliament?—I have been informed that they have been so collected. I have not been informed that any suits have been brought; for an exceedingly good reason—because tithes, among other dues and estates of the church, were preserved by the capitulation, were confirmed by the treaty of peace, and in point of right belonged to them. I have really no doubt. Whether the Roman Catholics have resorted to the law in temporal suits, I do not know; or whether they have resorted to the spiritual court, I do not know; but if it is stated to me, that between the capitulation and the present hour, the constitution of Canada has been in such condition, that the clergy could not have

claimed their dues, it is an additional reason for having this bill. You do no more than operate upon the right they had before, either to give it to a certain extent, or abrogate it to a certain extent. It is impossible, upon any definition of a tax, to make tithe appear one.

Mr. Serjeant *Glynn*.—Upon this new question, I beg leave to submit what occurs to me. I was in hopes of hearing a satisfactory solution of the doubt. I think it rests upon this—what is the present state of Canada?—what is the condition of the lands of Canada?—what is the condition of the clergy? If they have now no legal authority to collect their tithes, I think it will be admitted, that the bill is not nugatory; that the bill will give that legal authority. It has been said, that it is not necessary the matter should fall under the word “taxation;” that raising money upon the subject is the peculiar right of this House—a right not to be dispensed with. In order to ascertain whether this is raising money upon the subject, the question to be asked and answered is—Is there now any legal obligation to contribute? Was the subject under that legal obligation to contribute before? The learned gentleman says, that tithe has been paid; but that he knows of no suit to compel the payment of tithe. But the effect of this bill is to establish it as a right. If, therefore, I understand it rightly, the learned gentleman will not say that there is a law existing, that will authorize the clergy of Canada to recover in any of the courts; but that, when this bill shall have passed, they will undoubtedly have such authority. Then, Sir, the right to the tithe is founded upon this act of parliament; and if so, it is a new right given. We know they now receive through motives of religion, and voluntarily, from certain landholders; but they will henceforward be warranted, by legal authority, to receive from all landholders.

The *Solicitor-General*.—I do not mean to lose the privilege upon a new argument. I think, however, it would be very inconvenient to debate it. As the tithes stand at pre-

sent, the clergy do receive them. I believe it is equally true, that they have no suits in any temporal court. The mode of enforcing payment is by excommunication. They stand as before the time of Henry the Sixth. In the second and third of Edward the Sixth, an act passed giving an action for recovering tithes. That bill passed the House of Lords. It came from the House of Lords to the House of Commons. That I take to be a pretty strong authority, that when tithes were first taken up, it was not considered as laying a tax.

Sir *George Savile*.<sup>(1)</sup>—I am not quite able to follow the learned gentleman who spoke last in this distinction, but wish to confine myself to the learned gentleman who spoke before, and who has brought it to a single fact. I do not know whether the Roman Catholic clergy have, in fact, sued for those tithes. It is very necessary to know, whether they have a right to sue for them. The learned gentleman put it upon a very short issue. He argued, that they are in possession of the right of recovery under the capitulation; under the treaty of peace; under the proclamation. I should be extremely ready to take the learned gentleman's word, especially in a matter of science; but in a concern of this kind, a member of Parliament ought not to be so easily satisfied. I could wish, that we might see by the capitulation, by the treaty of peace, and by the proclamation, that they were left in possession of the right of recovery. I ap-

<sup>(1)</sup> Sir George Savile represented the county of York in five parliaments, and distinguished himself by his opposition to the American war, his two bills for a limitation of the claims of the Crown upon landed estates, and for relieving Roman Catholics from the penal laws, and by his zealous support of Mr. Pitt's motion, in 1783, for a reform in the representation of the people. Mr. Burke, in his speech to the electors of Bristol in 1780, describes Sir George "as a true genius; with an understanding vigorous, acute, refined, distinguishing even to excess, and illuminated with a most unbounded, peculiar, and original cast of imagination"—"during the session, the first in and the last out of the House of Commons." He died in 1784.

prehend directly the contrary. I apprehend they are not now in possession of the right of tithe; and if so, we are giving them a title to that right. Whether it is laying a tax, is another question. I wish to know whether, upon this ground, they are entitled to receive tithe?

The *Attorney-General*.—With regard to the proclamation, I never imagined that a proclamation so exceedingly loose and general could be pleaded as an authority. I stated, in the beginning, that it did not affect to relate to Canada; but I said, that the capitulation did reserve all their effects, moveable and immoveable. But even if it were otherwise, is it to be supposed that the tithe would accrue to the King? The tithe is collateral to the land, not sunk in it. To give the right to it, is giving to the secular body, as well as the regular clergy, all they were in possession of before. It was always my opinion an established fact, that the clergy were entitled to tithes, though they might not have sued for them.

The question being put, that the Bill be read a second time, the House divided. The noes went forth.

## TELLERS.

YEAS	{	Sir Archibald Edmonstone . . .	}	105
		Mr. Gascoyne . . . . .		
NOES	{	Mr. Thomas Townshend, jun. . .	}	29
		Mr. Charles James Fox . . . .		

So it was resolved in the affirmative.

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*Tuesday, May 31.*

Mr. Baker presented a petition to the House from Thomas Penn, esq., on behalf of himself and of John Penn, esq., true and absolute proprietaries of the province of Pennsylvania, and the three lower counties of Newcastle, Kent, and Sussex, in Delawar, in America, setting forth :—

“ That his late Majesty, King Charles the Second, by letters patent under the great seal, bearing date the 4th day of March, in the 33d year of his reign, was graciously pleased to grant unto William Penn, esq., (late father of the petitioner Thomas Penn, and grandfather of the petitioner John Penn), in fee, the said province of Pennsylvania, the extent and bounds whereof were expressed in the said letters patent; and taking notice of the bill ‘for making more effectual Provision for the Government of the Province of Quebec, in North America;’ and alleging that, from the best observations which have been made, and the most correct maps which have been laid down of those parts, and from other evidence, it appears that the river Ohio intersects a very large tract of the north-western, western, and south-western parts of the said province, as granted by the said letters patent, the limits or boundaries whereof in that part have not, as yet, been allowed and confirmed by the Crown; and that, in order to have the limits and boundaries of the said province ascertained, the petitioners did, on the 27th day of March, 1773, present a petition to his Majesty in Council, praying that his Majesty would be graciously pleased to appoint such disinterested persons in those parts, as his Majesty should think proper to join with such persons as should be named by the petitioners, to mark out and ascertain the northern, western, and south-western boundaries of the said province; which petition has been referred, by his Majesty, to the consideration of the lords commissioners for trade and plantations, and is now under consideration of that board; and that the petitioners conceive that the said bill will be injurious to them, if it should pass into a law, without containing some provision, that the same may not affect the petitioners’

rights under the said letters patent: And therefore praying, that the description of the territories, islands, and countries, to be annexed to the said province of Quebec, may be so confined, as not to affect the petitioners' said province; or that a provision may be made in the said bill, that the same shall not affect the petitioners' province, granted to them by the said letters patent; and that the petitioners may be at liberty to be heard by their counsel, upon the matter of their petition."

*Lord North.* — I do not rise to oppose bringing up this petition. It was never intended that the bill should intrench upon other colonies. Whenever any proposal is made to us, whatever can tend to secure Pennsylvania and the other proprietaries, shall meet with no opposition from me. The demand is so just and so reasonable, that, without hearing counsel, it ought to be complied with.

*Mr. Edmund Burke.* — I am glad to hear the noble lord say this. There are several other colonies anxious to petition; but if, in the committee on the bill, satisfaction is given, there will be no need of bringing up their petitions.

*Mr. Baker.* — It would be too much for me to say that the petitioners do not desire to be heard by counsel; for no gentleman can answer for what may be done in the committee. If, upon the report, nothing is done satisfactory to the petitioners, then I shall move, that they may be heard by counsel. Their intention was to be heard by counsel in the committee; what they have to state is very short.

*Mr. Edmund Burke.* — The boundary line of the colony of New York does come within the line marked out by the bill; and the proclamation has departed from the limitary line there, as well as in the other parts. All I wish upon the part of that colony is, that they should not suffer any injury by this irregularity.<sup>(1)</sup>

*Lord North.* — I have no objection to their being heard by counsel; but it is better for the petitioners to be heard

(<sup>1</sup>) *Mr. Burke* was, at this time, member for *Wendover*. He was also agent for the colony of *New York* in this country.

upon the report, if they should not have satisfaction in the committee.

*Mr. Baker.*—I trust such alterations may be made in the committee, as may make it unnecessary to have them heard at all.

The petition was ordered to lie upon the table, until the report be received from the committee of the whole House, to whom the bill is referred; and that the petitioners be then heard by their counsel, if they think fit.

*Mr. Mackworth*,<sup>(1)</sup> in rising to present a petition from the merchants of the city of London, trading to the province of Quebec, said:—I should not rise at this late period of the session, if I did not think the grounds of complaint are such that blame might be imputed to me, if I refused, upon any application, to apply to the candour and justice of this House, in behalf of several injured men, when we are filling up the blanks in the committee. This is one of the most serious concerns that ever came into this House. I do not mean now to go into the principle of the bill, whether we are establishing a French or an English law. The petitioners are gentlemen, whose property has been invested under the faith of the proclamation; men who have risked their property to a very large amount indeed, under an assurance, that that property was guarded by the laws of England: a Frenchman comes in, and takes them under his protection. Some individuals have thus risked some hundred thousand pounds' property. Different gentlemen have made six different reports: three were made in Canada; three by men who stand foremost in this House. I understand that, in those gentlemen's opinions, they could not agree in any joint judgment. They have reported differently. How difficult must it then be for the House, who are uninformed upon the question, to regulate concerning it. If it were possible, that this bill could proceed no further this session,

<sup>(1)</sup> Herbert Mackworth, esq., of Gnoil Castle. He represented the town of Cardiff in five parliaments. In 1776, he was created a baronet, and died in 1792.

and be brought in the next, I should like it better. Four plans have been given in with respect to the proceedings upon this occasion.

The petition was then read, setting forth,

“ That there is a clause in the said bill, by which his Majesty’s royal proclamation, and the grants and commissions issued in consequence thereof, will be revoked and made void ; and that, by another clause in the said bill, all matters of controversy relative to the property and civil rights of any of his Majesty’s subjects of the said province, are to be decided by the laws of Canada, and by the judges presiding in the courts of judicature of that province, without the interposition of a jury ; and representing to the House, that the system of government and administration of justice in the said province of Quebec, which have taken place in consequence of his Majesty’s said royal proclamation have been hitherto, as nearly as might be, according to the laws of England, and such government and administration of justice have been perfectly satisfactory to his Majesty’s subjects residing in the said province of Canada ; and the petitioners conceive it will be highly injurious to his Majesty’s said subjects, and all other his Majesty’s subjects trading to the said province, to have the laws of Canada substituted in the place of the laws of England, and to have the trial by jury abolished : and therefore praying, (in behalf of themselves and others interested in the prosperity of the said province) that the said Bill may not pass into a law, with the above-mentioned clause remaining in it ; and that they may be heard by their counsel against the same.”

The petition was ordered to be referred to the committee on the said bill, and that the petitioners be heard, by themselves or counsel : after which, Francis Maseres, esq., late attorney-general, Major-general Carleton, governor-general, and William Hey, esq., chief justice of the said province, were ordered to attend the House on Thursday.

Captain *Phipps*.<sup>(1)</sup>—From what has just passed, I think

(1) The honourable Constantine John Phipps, eldest son of Constantine, first Lord Mulgrave, of New Ross, in the county of Wexford. He was a captain in the royal navy ; in which station he made a voyage, in 1773, to discover the existence of a north-east passage into the South Seas, of which

this will be a proper time to express my doubts, as to the propriety of going into the committee upon this bill. I was negligent in not attending the other day. When I came down to-day, the first question I asked was for the evidence ; for I naturally supposed that evidence had come down from the House of Lords. I supposed the House would have moved for a conference with the Lords, to desire the evidence and ground upon which they had passed this bill. I expected the friends of this measure would have told us, why a bill of this nature originated in the House of Lords. I believe there cannot be a bill of more importance than the one now before us. It is not very usual for such bills to take their rise in the House of Lords. If it had taken its rise in this House, I take it for granted, the first sort of evidence we should have called for, would have been in a previous committee. I should be glad to know why a business of this importance should have lain so long dormant, and why it was necessary to take it up at this time. This is not a time to begin very important business. If we had had a committee to inquire into the administration of justice in Quebec, we should have had before us all the laws and ordinances that have been passed by the government for the last nine years. We should also know what the French law, that is to be substituted for the law of England, is. That such a system of laws, such a system of property, was to be protected by government, I never understood was the idea of this country. I should have expected proofs to have been brought to this House, that it was so. When the bill mentions a hundred thousand persons, I would ask, whether no inhabitants have gone from this country under the faith of the proclamation ? I look upon that proclamation as a compact of the Crown with the

he published an account in the following year. He afterwards filled successively the offices of first lord of the admiralty, joint-paymaster of the forces, lord of trade and plantations, and commissioner of the India board. He died in 1792, without issue, and was succeeded in the Irish barony by his brother Henry, father of the Marquis of Normanby.

subjects of that country ; as an inducement to those who should settle as merchants, to purchase land, and mix with the inhabitants. I should have expected to hear that no Englishmen had laid out their money in that way ; or that they would come to our bar, and tell us, that they found themselves oppressed by living under the laws they had been used to, and that they wished to be released from the burthen, from the slavery, of the laws of England : for such this bill holds them out to be. I should have expected that the merchants, who had probably given a great extent of credit, thought they would be safe in recovering their debts in the country, under a system of law not more known to them, than the laws of England are to the Canadians ; and they must know little, if they do not know that the whole world rings with the excellence of our laws.

I should have expected that evidence would have been taken in the place where the bill originated, from all persons who have filled high offices there, or resided in the country ; but none such have given evidence in the other House. You are now going into a committee, without having such evidence brought here. I should have expected some evidence, that the fisheries of this country would have been injured by the coast being put under the government of Newfoundland. I should have expected that three or four persons now in England, would have been called to the bar to give evidence, as to how far the sedentary fishery upon the coast, supposed to be in the hands of the Frenchmen—how far that fishery ought to be so preferred, as to destroy the fishery of this country. I should have been glad, if the merchants of Poole and the merchants of the western counties in England, had given evidence as to how far the taking away that fishery from the government of Newfoundland, was proper—whether there should not be a fleet to watch the French fishermen ; who certainly will be favoured in preference to our own. They will be instrumental in carrying on smuggling, which will give the scale against the English who come there : if so, the French will carry on what trade

they please there; and the governor will be debarred from protecting the English fishery, because it is put under another power. I should have expected some evidence to have been brought to that point. I should have expected some evidence would have been brought of the propriety of establishing a small and fluctuating council, and of holding out to the country, that it will never be proper to have an assembly. I should have wished for evidence from the proprietors in the country, as to their not having any legislative power; for no such assembly does exist, and that council is to be appointed during the pleasure of the governor only—I should have wished for some proof of the propriety of taking away all appeals in civil cases in that country. If it should be said, there is not any intention to give an appeal, I should wish to know, from evidence, whether the people who are of that privy council are masters of the French law: and indeed, as this act stands, I do not see how they can grant an appeal; for by one clause, all judicatures are to judge according to the laws of Canada.

Sir, the effect of this bill must be to deter every Englishman from acquiring property in Canada; because he is to hold it under French law. If there is a single Canadian who says he wishes for it, it is because he does not understand what he loses. This bill not only goes to the settled parts; it takes in a great extent of country now uninhabited. All these reasons would induce me strongly to oppose this bill, and to throw it out. If the House should not think proper to adopt this Lords' bill, there are many members able to modify the laws of this country, with respect to Canada, and to give to those laws a judicature controllable by higher judicature. I do say, from knowing the history of this country, that the peculiar excellence of our law, has been its admitting partial exceptions in favour of particular kinds of men, who have occasion to reside here; as the Jews, for instance—to give them a security without breaking up our system entirely, and stating by act of parliament, that the municipal laws of England are incompatible

with the welfare of any part of the subjects of this country. Thinking, Sir, that some law upon a very different plan from this might be framed, that would give satisfaction to every part of Canada, I must be against carrying to the committee a bill, incapable of being mended when it comes there.

Sir, there is another point—the reservation of all the dues to the Roman Catholics. I am not to be blamed for my ignorance of what those dues are, or what that tax is, which I am going to impose. I would have some settlement made for the church of England: if any provision, it should be by tithe; but there are few instances in our colonies in which the clergy are paid in that way. In Pennsylvania every man pays his own clergyman. He pays to the congregation to which he belongs. Without wishing to take from the Canadians their religion—without wishing to take away the federal rights of that country—and without thinking that the Canadian, because he professes the Roman Catholic religion, would be unfit, under certain limitations, to be of the legislature of that country, I think there might be some limitations; but I would not have the Roman Catholic religion established as the favourite religion of the country.

In short, Sir, I see nothing in this bill but the language of despotism. It is a subject too great for me. The shortest way is to repeal every law made there, and to let them be governed by the laws of Canada, though I do not know what those laws are. The bill may materially obstruct the recovery of debts; and, from the present situation of this country and America, there are but too many complaints already, without introducing them into other colonies where they do not exist. If the House thinks it becoming them to adopt this bill, I consider it highly incumbent on them to pass it as a temporary bill—say for three years—until some regulations can be formed. Without that, it is as pernicious a bill as ever passed this House,



and I see no shadow of argument, that can be adduced, to make it a perpetual measure.

The *Speaker*.—I have no question.

Mr. *Mackworth*.—I move, Sir, “that there belaid before this House copies of the reports made by Major General Carleton, governor of the province of Quebec; by William Hey, esq., chief justice; and by Francis Maseres, esq., late attorney-general of the said province, relative to the state of that province.”

Lord *North*.—These reports will be a very long while copying. I submit, as we are likely to have the assistance of the persons themselves who made those reports, whether we shall not be as well informed without them. The reports are inferences of matters of fact which we may have brought before us. Upon that ground, I shall oppose the motion; because I am confident every information may be had in a more authentic manner from the parties themselves, *vivâ voce*. If these reports are produced, others must be called for: there are others.

Colonel *Barré*.—I do not wish to stop this business. The noble lord says, that these papers will be a long while copying; that the principal persons concerned are some of them here now; and that others will be here on Thursday, who will give you *vivâ voce* evidence; which is true, with regard to general Carleton—which is true with regard to Mr. Maseres—which is true with regard to Mr. Hey—and likewise with the King’s advocate. But, I do not know how to come at the opinions of other gentlemen who have submitted their opinions in writing. I wish to see whether those gentlemen, in their legal capacities,—the attorney and solicitor-general—have signed their names. I do not want to know what they have to say here. This may be obtained by calling for those two gentlemen. If the noble lord resists, it will then be time enough to move; and then I will call upon the attorney and solicitor-general to state their opinions, to which they have signed their names.

I do not know what the House will think of this proposal. To me it is perfectly satisfactory. I hope neither of those learned gentlemen will depart from the opinions to which they have signed their names. I shall not *opiniâtre* the matter. I shall be satisfied if I get the same opinions here, not mixed up with any side-wind. I will take that information in the way it is proposed. I will not endeavour to delay the business; but denying us both methods of obtaining evidence, is leaving us in the dark. Perhaps it is better to be left in the dark. I know of no way of defending despotism. I do not like to see an English Parliament disgrace itself, by establishing despotism by an act of its own. I do not want to see monsters introduced. I am certain the noble lord, at the end of the business, will not carry through this bill.

Mr. *Mackworth*.—I moved that the reports might be produced, from a desire to get information; but, if this case is not of sufficient importance to make that delay necessary, I am under a very great mistake. Can there be a reason given, why we, who are to judge upon it, should not have the information necessary? Are we to take it, without information, from the House of Lords? I have no hostile intention against this bill; but, if we are to be straightened in time, and are not to have copies of these reports, for God's sake let us not go through this bill. Mr. Maseres has taken infinite pains to draw out plans for the better government of the country. He has formed different modes of proceeding, for gentlemen who wish to have this information. Are we alone, the Commons of England, to be deprived of the information? I beg leave to assert, that information given at the bar, is not equal to what may be obtained from these reports. No member can grudge the time necessary to make himself master of the information upon which he is to give his vote. Already the merchants have brought that country to wear an aspect very different from what it did a few years ago. The exports have been great indeed. Can we go and demolish the

laws of England, without strong and cogent reasons being alleged for our so doing? If so, I shall believe I am not sitting in a British House of Commons. The gentlemen opposite think they have adopted the best plan. I have the opinion of a most able man, that they have adopted the very worst. I do not venture to say that this is the case; but I will venture to say, that we are in a very unfit state to come to a vote at present. Gentlemen do not seem to be conscious of the vast magnitude of this measure, giving, as it does, to Frenchmen a rein to go to any extent they please; if you give them an indulgence, they will wish for more, and be induced, in case of a future attack, to give a preference to the government of France, rather than adhere to the interest of England. Every delay is justified, by which you can get information. It does appear to me that information, *viva voce*, is far inferior to a report, drawn up coolly and officially. It is the best sort of brief that can be brought to the House; for we are all counsellors here. Therefore, I hope the noble lord will assent to the motion; for, without his assent, we shall not get it.

*The Attorney-General.*—As far as I have been called upon to give my opinion, I never have made, I never mean to make, any kind of secret of that opinion; but I ought, in duty to the House, and out of regard to the honourable gentleman who has made a very singular proposition, to apprise the House, that whether my opinion is or is not to be laid upon the table, it is flatly impossible it should come in the way he proposes. If the House were to call upon me to state my opinion as a servant of his Majesty, the only line of obedience would be to read that opinion. I could not trust the slipping a single word of it; but gentlemen know, it does not consist with the rules of Parliament to demand any of his Majesty's papers, otherwise than by address; and it would be a breach of my humble duty to his Majesty, if I, without regular and parliamentary commands, were to state what I had written, in obedience to his Majesty's commands. My opinions are stated upon paper. No

man has a right to take them out of the office, and read them to the House. If the House think proper to be informed, it must be in the way of address to his Majesty. With respect to the propriety of such an address, I have been very much astonished, that any gentlemen should maintain, that an opinion given abstractedly from any act of Parliament, but upon the authority of the law as it then stood, would be the sort of information which this House could want, for the purpose of making a law with respect to Canada. The only sort of information the House has ever proceeded upon, on such an occasion, is this: that people are told to lay before the House a competent knowledge of the fact. Does Parliament want to be advised by persons who sit here? Certainly not. Do they want advice how to proceed in a parliamentary course? Since I sat in Parliament, I have many and many times heard questions not only objected to, but flung by without the slightest debate, only because their object was, not to obtain information upon facts, but the opinion of the witness what ought to be done. But, says the honourable gentleman, shall we therefore proceed in the dark to make a law of such importance and extent as this? I confine myself to the words importance and extent, applying no harder epithets. So far from being a law of tyranny, if liberty were about to be forced upon the Canadians by the hand of power, by the hand of compulsion, I should hold that which bears the specious name of liberty, to be a harder act of tyranny and power, than any we could invent. It would be taking away their laws at one stroke, and giving them others. The honourable gentleman says, "But we want information concerning facts only." Those facts you would require to have proved; and unless it could be stated to the House that they were facts, real facts, not opinions upon facts, I believe it is exceedingly unparliamentary to resort to that kind of assistance for forming that kind of opinion. I am clearly of opinion, that the papers moved for or alluded

to, are not of a description to induce the House to postpone the bill to another session.

Colonel *Barré*.—The learned gentleman says, you are to examine the evidence upon facts, but not to take that evidence's opinion. Why, Sir, suppose a great legal question to be agitated in this House; suppose, what I believe is pretty true, that many gentlemen in this House are much influenced by the power of the King's servants learned in the law; suppose those learned gentlemen had given an opinion directly contrary to the bill which is sent to us from the Lords; suppose that no man, either in that House of Parliament or this, would own he was the father of it; suppose this to be the case in any one proposition you please—is it not reasonable for gentlemen on one side of the House to be told by the other, that the King's servants have given such opinions? Is it not reasonable, on the other hand, to see what are their opinions?—If those opinions happen to be in the teeth of what is recommended to us from the other House, what ought our conduct to be then? Would you not naturally entertain a strong suspicion of the impropriety of the bill, and in that case reject it? Perhaps I may be wrong: they may have given an opinion in favour of it; but the world without doors say, they have not given an opinion in favour of it. I must justify myself. I wish for information; but I find I am to be debarred from it.

The *Attorney-General*.—It has been taken for granted, that the King's law servants have given an opinion concerning a bill to be brought into Parliament. [Many members called out no! no! no!] No opinion they could give as lawyers could possibly relate to the bill to be brought into the House. If they gave any opinion about any bill which was to be brought into the House, it was not an opinion given as lawyers, but merely an opinion of what was fit to be done upon such and such occasions.

Colonel *Barré*.—The settlement of Canada has been under consideration some years. It is natural to wish to give to

this people as much liberty as possible, without oppressing them with that liberty. Perhaps the King's servants have given an opinion, that more liberty might be given them.

*Mr. Edmund Burke.*—I shall say very little upon the subject, and I should wish to act still less, because I do not wish to speak or to act upon what I do not know. I do not remember that I at any time came here with so little information given me, to decide upon a question of this degree of magnitude, since I had the honour of sitting in Parliament. That my honourable and learned friend is ready to come to a decision is very natural. He walks in the light; but if he stood as I do, without any particle of official information, he would wish to be supplied with every degree of parliamentary information—parliamentary in the form, absolutely necessary in the substance. I think that information should be moved for agreeably to the sense of the learned gentleman, by address to his Majesty, and that the request should be put in the most respectful manner to the Crown.

The circumstance of the parliamentary form, then, being settled, I now come to the substance. The learned gentleman observes, that it is a tyranny to place over a whole people a law they do not understand. But, Sir, is it not less a tyranny to place a law over them which they do not understand, than to impose upon them a law which we do not understand ourselves? Does this House know what that law and custom is which they are going to impose upon their fellow subjects? I do not condemn either the present law, or that which is proposed in its place. I will not approve the one or the other; much less attempt to impose it either upon Frenchmen or Englishmen, until I know more of the nature of those laws than I do at present. The customary law of Canada may be a defect grown up from the time of barbarism, and corrected by despotism; as in many parts of France, in many parts of Germany, and in many other parts of the world. Can we say, what is the customary law of Paris, which is going to be made law by

this bill—which is going to be made law in Canada? Do we know how to modify it by the practice and admission of the civil law, which has been admitted into almost all the provinces of France? For observe, that it is not the custom of Paris, which has been mitigated by ordinances and mitigated by the civil law, which is proposed to be established; but the custom of Paris, unmitigated, unqualified, is now proposed to be established for ever, as the law of the province of Canada. I should be glad to read the clause, to see if I am right in that expression; for I could wish to be correct. In page 3, it says, that “all his Majesty’s Canadian subjects shall hold and enjoy their property and possessions, &c.; and that in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada.” I see I was rather mistaken, and am willing to correct myself. It is not the custom of Paris that is to be established in that extent, but the custom of Canada, of which we know little or nothing. But there is something worse in the wording of this clause; for it is to be established, it is said, “in as large, ample, and beneficial manner, as if the said proclamation, commissions, ordinances, and other acts and instruments had not been made.” The wording of this clause supposes, that the acts and ordinances, and law of England, had not been beneficial to the Canadians; that the law of Canada is by the English government approved; and the law of England stands condemned, as not being beneficial. Now, I should be glad to ascertain two facts; first, whether the British government is odious to the Canadians; and next, what are the excellences of that government to which we are reverting; what beneficial effects it has produced; and whether the people of Canada have flourished more under the French government, than under the English government? These are matters of fact necessary to be known, to enable us to judge of these laws. I shall never be induced to consider government in the abstract. The government under which the people have flourished most, that is the best government. I should

desire to see the present state of the country compared with its state for the twelve or fourteen years preceding the troubles that gave rise to the present measure. Perhaps the people have enjoyed great benefits. If they have, I would inquire, whether this proposed change must not produce great inconveniences? Until I have this light of facts, it will be impossible for me to give an honest vote, with a view to a change of the government of Canada. If you introduce laws that have lain dormant for twelve or fourteen years, it is as much an innovation, as if you had made the constitution new. I have no objection to make the constitution new, provided the necessity of so doing is set in a clear and satisfactory manner before me. I think Parliament can proceed upon no principles but two—reason and authority. Reason we have none. The next question is, what is our authority? I believe the opinions of the learned gentlemen near me, will, must, and ought to have their due degree of weight with the House. They seldom give their authorities, without, at the same time, giving their reasons. It may be said, we have the gentlemen here, and therefore have no need for their written opinions. I should very readily agree to this, if gentlemen will tell me that these written opinions may not have been given with a greater or less degree of latitude in the council—if gentlemen will tell me that I cannot, for the sake of the public good, have those facts brought before us, which those learned gentlemen made use of to justify their own opinions. The reasons of those great law authorities, combined with the authority of those facts, must have great weight with me.

I have hitherto avoided offering a single word upon the general policy of this bill. It is said, the general provisions of the bill are to be considered in the committee, and the general argument on bringing up the report. I guard myself from this admission, upon this single question—ought not such a ground of information to be first given, as will induce you to reject the law of England, and assume the law of Canada?—that is, to reject the law which you do know, and the beneficial effects of which you have experienced, in



order to impose another law upon the Canadians which you do not know, but the ill effects of which you have felt? Are you to proceed, in a manner so wild and at random, in condemning the British laws unheard, and establishing the French law in Canada? I may venture to say, "condemning" the law of England; because its condemnation is virtually made, the moment it is proved not to be beneficial to the people. I believe I am not so attached to words, as to put my own opinion in competition with that proof; but as yet I have no evidence that the people do not like our law. I do not know this to be the case. The presumption is, that the law under which they have long lived, is the law most agreeable to them. I will go upon presumption, when I have no other ground to judge upon. The law may have been more agreeable to them from their ignorance. They did not know of any better; and the moment they know some other system more beneficial, they may wish to adopt it. Until I know that the people of Canada condemn the British law, I will not impose another, which their own enlightened judgment would have rejected. Has any petition appeared before the House, to tell us the law was a burthen to them? Is either the form of trial, or the laws by which they are tried, disagreeable? What evidence have we of all this? As a friend to the people of Canada, I ask these questions. The conquest of them should not make them less dear to me: I would even treat them with a milder hand. The treaty, too, has demanded it: but until I know that the English laws are not beneficial—are not good for all men in all cases; until I know this,—until the people of Canada complain of them—I will not presume that they are opposed to them. At present, there is an English complaint against the establishing of French laws. I should be glad to hear a French complaint against the establishing of English laws; and whenever that comes, I shall be ready to give it a fair hearing. But at present, the bill stands upon no complaint. There can be no mischief in postponing it; but there may be much mischief, if you give the people French despotic government, and Canadian

law, by act of parliament. By a delay of a year, they would be kept out of the advantage of having Canadian law universally established, which Canadian law universally establishes a despotism; and there is nothing left to complain of but the despotism established by necessity. At present, they bear that grievance; but a grievance by necessity, and a grievance established by law, are two very different things. Supposing the bill to be delayed for a whole year, the extent of the evil on our side will be, that we shall have more information; and as for the Canadians, they will remain a little longer in the same situation in which they are at present. If you were prepared to give them a free constitution, I should be in haste to go on; but necessity—"necessity, the tyrant's plea"—is urged for proceeding immediately.

Let us have evidence, then, of that necessity. I stand for the necessity of information; without which—without great, cogent, luminous information—I, for one, will never give my vote for establishing the French law in that country. I should be sorry to see his Majesty a despotic governor. And am I sure that this despotism is not meant to lead to universal despotism? When that country cannot be governed as a free country, I question whether this can. No free country can keep another country in slavery. The price they pay for it will be their own servitude. The constitution proposed is one which men never will, and never ought to bear. When we are sowing the seeds of despotism in Canada, let us bear in mind, that it is a growth which may afterwards extend to other countries. By being made perpetual, it is evident that this constitution is meant to be both an instrument of tyranny to the Canadians, and an example to others of what they have to expect; at some time or other it will come home to England. When it is proved that the laws of England could not govern Canada, it will be plain that some stronger power than the laws of England is necessary to govern this country. I shall give my first vote upon this bill, against

the despotic government there; whether it is to be established for any length of time, or to be established at all by Parliament. When you cannot make a free government, you ought to leave a country to be governed by the force of necessity. Government, and a free government, are two different things; but with regard to those laws which are in use at present, I cannot form an opinion—I know nothing of the custom of Canada. I should be glad to receive proper information. When I have received proper information, I will then endeavour to speak to the merits of the bill as far as I can: at present, I cannot form any opinion. I wish to have it understood, that what I have now said relates solely to the question of information.

The *Solicitor-General*.—The honourable gentleman began, with great propriety, by arguing as to the necessity of information with regard to facts, before you come to form any opinion; but, in his conclusion, not quite consistently I thought, he argued as to the formation of a most decisive opinion against the bill, without any of the information that he required. But, Sir, if this is not a stage when the argument upon the bill is to be taken up, it is not a period of the bill in which that information could have been already given to the House; but it is a period in which gentlemen may state what information they expect, and may call for that information before the consideration of the bill goes further. Now, I perfectly agree, that it is fit the House should be informed in matters of fact, before they proceed to take any conclusive step with respect to those matters. But what are the matters upon which the honourable gentleman wishes to receive information? He wishes to know what is the actual state of Canada—whether the inhabitants are satisfied with their condition, or are dissatisfied—he wishes to know the ground of their dissatisfaction, if any dissatisfaction be expressed—he wishes to know the customs and laws by which they were governed before they fell under the dominion of England. All these particulars it is necessary the House should receive informa-

tion upon; and all that information, in the best and most competent manner in which it can be given, is proposed to be submitted to the House. But from whom are you to ask of the state and temper of the people of Canada, except those who have passed some time in the country? From their situation and character, they ought to give the fairest relation. For that purpose you will have brought before you a gentleman of high character—of very great humanity—much respected in his civil capacity—and who has shewn himself, as I believe all the world admits, to be equally eminent in his military capacity. That gentleman will give the House full information of every thing during the time he resided in that country. Mr. Hey, the chief justice of Canada, who is well qualified in every respect for a witness, is likewise to attend; with another gentleman, Mr. Maseres, who has filled the office of attorney-general. All these gentlemen, and others, will attend to give the House the very information which my honourable friend says is necessary, before you can form a right judgment of the system proper to be adopted in the establishment of the bill.

But besides this information which may be then obtained, certain speculations will be submitted to your consideration, which, at certain periods, were entertained by certain persons with regard to this law-system of Canada. I shall be at all times very happy, that any speculations which I may have formed should be known; but I cannot conceive what possible effect those speculations could have upon the deliberations of the House, as to whether this bill will be a proper bill or not. How it can be judged of by private speculations, I can form no idea; but if these can be no test of the measure, will they lay no ground of prejudice in the mind of any person? We ought to entertain no prejudice for or against the measure. Its merits or demerits must be tried upon fact. The speculation—the system—the theory—of any particular individual, would have, and ought to have, no weight whatever over the deliberations of this House. The best of those speculations, and, I am

sure, the most respectable of them, are in print ; but I shall pay no more to regard them, than I do to Mr. Locke's laws of Carolina. Certainly, they are pretty amusement—good general reading ; but, as applied to the particular questions necessary to be attended to in the discussion of this bill, they never can come into competition with evidence taken at the bar of this House.

My honourable friend has mentioned another thing that is material ; namely,—what the sentiments of the Canadians have been—whether they have expressed satisfaction, or dissatisfaction, with the present government of the country. Those gentlemen who are about to attend can inform us on these, and many other nice questions. In order that all such matters may be brought before the House, I apprehend it is only necessary that we should proceed to the committee. The first thing will be to hear those who have petitioned against the general ground of the bill : they will possibly have evidence to produce. We shall then call on other persons who are capable of giving the House the information they require. Then we shall come, not to compare systems we are ignorant of, but those we are acquainted with, because we know the ground we are proceeding upon. If we like them, we shall adopt them ; if we do not like them, we shall reject them. I think we cannot be taxed with precipitation, or with being in a hurry to give the Canadians a government. The term *freedom*—the term *liberty*—are relative terms. Absolute liberty exists nowhere. A government that will make the people happy, is the best government for them. I do not think, in the abstract or theory, the highest degree of liberty ought to be granted to a country, situated as Canada is—not the highest degree of political liberty. I still less think it is fit to leave the government of that country to a train of events, with reference to which they are to be eternally modelling and disposing of themselves.

Mr. *Gascoyne*.—A question has been asked—what grievances have been felt by the Canadians ? I was not in

your eye, Sir, or I should have told the House that there have been great grievances in that country. For some little time after the proclamation, there was nothing to complain of; but, afterwards, ordinances were published, in consequence of which, no Canadians could have justice. Their estates were even taken away from them. I believe they have suffered much by those proceedings;—they mentioned them long ago; and the board of trade reported on those grievances in 1769, in which reports reference is made to some that were drawn up in 1765. I will instance one complaint—that against jurors. They, at one stroke, cut them off from the benefit of the constitution, and all civil society. They had no advocates—no proctors—no lawyers.

Mr. *Edmund Burke* rose to explain.—It is supposed by my learned friend, that I have approved of the government exercised in Canada for fourteen years. I am very far from approving of it; but I do not wish to disapprove of it without having evidence before me. I should not be so foolish as to bring forward such a condemnation of government, without abundant evidence to justify me in so doing. I think the honourable gentleman has very clearly shewn you two things: one, that grievances arose from ill-understanding hasty ordinances; the other, that they were issued by the despotic council now established. What is the cure proposed for this grievance? to establish a legislature, with power to issue more of such ordinances. The honourable gentleman, in speaking of the presentment of a grand jury in Canada, said, it was a circumstance of horror—of infamy; that an English grand jury making a presentment, was a thing they did not understand. If, however, men have abused that most admirable institution, taking advantage of the ignorance of others, this ought to be a reason for correcting the institution, and not for throwing away one of those things which we have found most beneficial. If, after all, there is no way of correcting existing abuses by an infusion of English liberty, the people of Canada must remain under a despotism; but this must be allowed only upon the last necessity.

Mr. *Pulteney*.—Though the House may indulge the two learned gentlemen from reasons of delicacy, in not producing their reports, those of the governor and council may at least be produced.

Mr. *Mackworth*.—I have no objection. Let the order stand.

Mr. *Gascoyne*.<sup>(1)</sup>—Mr. Maseres's report is printed; the others would make a large quarto. They must work day and night. It is not possible to copy them in the time.

The question being put, "That the report of General Carleton be laid upon the table," the House divided. The yeas went forth.

## TELLERS.

YEAS	{	Mr. Thomas Townshend, jun. . . . .	}	46
		Mr. Mackworth . . . . .		
NOES	{	Sir George Osborne . . . . .	}	85
		Mr. Cooper . . . . .		

So it passed in the negative.

Mr. *Dempster*.—I rise, Sir, to give my thanks to the gentlemen opposite, for allowing us any information upon this subject at all; but it does strike me, that there are some words in the proclamation, by which the honour of parliament is pledged to give a constitution to that country. This being the case, I would submit to the House, whether we can proceed to the further consideration of the subject, without knowing whether it is essential to give that constitution or not. His Majesty must have called upon the great law officers for their opinions, and we should know what those opinions are. I do not know how it is possible to form a judgment upon the bill without having them. The learned gentlemen looked upon these as mere reveries. I think they are the best opinions we can have; and I think it is the more incumbent upon the House to call for information, because we have reason to believe the subject was not discussed so fully in the other House as it should have been. I have understood, that

<sup>(1)</sup> Bamber Gascoyne, esq. He was at this time one of the lords of trade and plantations.

the Canadian merchants gave notice to the noble lord, who brought in the bill, of their desire to be heard. They were assured they were to have notice, when the bill was brought in. They intimated they would be glad to wait upon that noble person, to state their objections to it. A great deal of time elapsed, and, when they did state them, they were told it was too late. In the first place, we are to give a constitution to Canada; in the next place, that country, not long ago, belonged to an enemy. The inhabitants are not supposed to have much affection for this country. I think every sort of information on the subject ought to be given. Observe the way in which this business has been transacted. The administration have taken eleven years to consider of the subject: they have had it referred to the board of trade, and to the law officers abroad and at home, and now the matter is brought before Parliament; and the strongest reason, if you may judge from the late division—the only reason—why we are not to have the necessary light, is the time it would take to copy the reports. How far that is a sufficient reason, I leave the House to consider. These people ought to have all the indulgence, with regard to the laws of England, that we can give them. I move, Sir, that there be laid before the House, copies of the reports of his Majesty's advocate-general, attorney-general, and solicitor-general, relating to the province of Quebec.

*Mr. Mackworth.*—The opinions of the law officers ought to have weight, and have had weight elsewhere.

The House divided. The yeas went forth.

#### TELLERS.

YEAS	{	The Lord Folkestone . . . . .	}	45
		Mr. Byng . . . . .		
NOES	{	Mr. Gascoyne . . . . .	}	85
		Mr. Robinson . . . . .		

So it passed in the negative.



The order of the day being then read, and the House having resolved itself into a committee on the bill, Mr. Mansfield, counsel for the merchants of the city of London, petitioners against the bill, was called in, and addressed the committee to the following effect :—

Mr. *Mansfield* <sup>(1)</sup> began by acquainting the Committee, that the merchants had such connections in the country, that they wish to point out to the committee the objections they had to one or two of the clauses in the bill; that they did not petition against the bill in general; that they did not do this from any wish to oppose a bill that might be approved of by the legislature, but because they thought their own private property was concerned, and that they were likely to be sufferers, if the provisions in the bill should prevail.

That the petition states, that the King's commission is found inapplicable to the present state of the courts, and recites the particular provisions of the bill that all suits should be decided by the judge there; that this was at once to overturn the English law, and to substitute in its place the law of Canada, and at once to exclude entirely the interposition of a jury.

That they object to one of the most essential clauses of the bill, which establishes not for a time, but for ever, the legislative council: that this as a temporary provision they could not possibly object to; but that it was as yet without example: that a temporary provision of that sort had been in no colony; and that the Canadians were to be marked out by the most odious of all distinctions—because when pushed as far as it will go, it makes them slaves, whereas the inhabitants of all the other colonies are freemen. That it was for the wisdom of Parliament to consider, whether such as yet unexampled mode of legislature is to take its rise in the Parliament of Great Britain.

That his Majesty's proclamation in the fullest and amplest terms, gave all reason to expect that no law but the law of

<sup>(1)</sup> Afterwards Sir James Mansfield, knt. In 1776, he was returned to parliament for the University of Cambridge; in 1780, appointed solicitor-general; in 1799, chief-justice of Chester; and in 1804, chief-justice of the court of common pleas. He died in 1821, in his eighty-eighth year.

England: that in consequence of the optional jury, by which either of the contending parties might have a jury intervene (but if not, the suit was to be decided by the judge), many causes have been tried by juries: that this view was not only the opinion of the British subjects, but of the Canadians themselves: that he was warranted to say, that after ten years' experience, no complaint had been made of it; that the more you inquired into the temper of the Canadians, the more you would find them satisfied with it, and desirous to have continued among them this very mode of trial.

That he was satisfied it would appear, that the general state of the province was more flourishing than in the time of France, both as to trade and agriculture: that this was the strongest proof that there was no necessity for overturning that system of law, under which individuals were happy, and the province in general flourishing. That he had nothing to prove before the committee, as to the complaint alleged; that he could only say, upon the best information, that nothing had been done that deserved the name of injustice; that it was very easy for factious men to raise distrust among a few; that it would be found confined to very few persons indeed, and probably to have been promoted by those who have different views from those who are to decide upon this bill.

That the particular objections the merchants had to the clauses of the bill, were the introduction of Canadian laws, and the exclusion of juries: that everybody must know they were extremely well-founded; that first, with regard to the Canadian laws, the House had had a bill sent down to them from the Lords, at once establishing in general this system of Canadian laws; that all civil controversies were to be decided according to it: that the respect and deference he had for the noble peers who had passed this bill, made it impossible for him not to believe, but that they were extremely well-informed of the Canadian laws; that if they were to be asked, with regard to property, what contracts were legal, what invalid, when necessary to enforce contracts, what satisfaction to be made in consequence of private wrong, what the measure of damages, and a thousand other questions, he takes it for granted, every one of those noble lords would give

very decisive answers; but that, the committee were to examine upon their own information.

That the law to be established was to be found in thirty volumes; ten or twelve in quarto, the rest in folio: that the British subjects thought that they had a right to what they ask, not only as far as they themselves were concerned, but for the benefit of all the subjects that were in Canada: that it was fit, justice should be administered by persons known and approved here, and worthy of the royal confidence; but how were such persons to be acquainted with the Canadian law? Either judges must be taken from Canada, totally unacquainted with the administration of justice here, or judges must be sent to decide in those courts according to Canadian law, who are totally strangers to it; and those who, at the same time, are to administer justice, must first prepare themselves by a short study of those thirty volumes. That these were considered by the persons for whom he appeared before the committee, strong objections to the introduction of that law; that as far as they had been able to get any light upon it, it was not preferable to the law of England, but, in many respects, was not to be compared with it. That the opposition to the introduction of this French law did not at all exclude any provisions that may be thought necessary; such as relate to the descent of real property, its devolution, &c., if, considering the state of Canada, it might be fit to break in, in that respect, upon the English law. That in a commercial country, it was fit that that law should prevail, which was best adapted to commerce, whether it was to be found in the Canadian or in the English code.

That the bill itself bore testimony to the merit of trial by jury; that the Canadians themselves are willing to trust their lives and limbs to this mode of trial; but that it is supposed, in civil cases, not to be approved by them. That as to its inapplicability to the present state of that province, it has been found applicable to every state of society: that it had its rise in rude and barbarous times; that it had been continued by cultivation and refinement; that any man who disapproved it, ought not to be heard in this place, or any where else; that it was the wisest and completest mode of deciding that ever entered the head of man: that there

was nothing in the air or climate of Canada that could be adverse to it: that if there had appeared before this House a hundred thousand complaints, they ought not to be listened to. That whether all the blessings which Englishmen suppose they derive from it, should be given up to humour a whole people, might be a question, but that there was no objection made to such mode of trial; that it was a trial, as far as it could possibly be, by the equals of the parties litigating, and by men who were under the various exceptions and regulations provided by law, to prevent interested persons from serving upon juries: that no man of the least degree of common sense, when the novelty of the object no longer struck him, could possibly be dissatisfied with such a mode of decision; that it secures to them fairness; that it secures to them impartiality; that it secures to them that which is of great importance, judgment. That the jury can never be tempted to do the parties injustice, because they will, in their turn, have them for judges: that there does not exist a human creature, who, after a short experience of this mode of trial, could disapprove of it. That, considering it in a political view, as a defence of liberty, it was material that civil as well as criminal causes should be decided by juries: that one of the great checks to arbitrary power was this, that every undue exertion of it to the inquiry of an individual, might be brought to the tribunal of a jury. That it was in this view a guard to public liberty.

That it was not enough that Canada should be governed by the legislative council without the interposition of a free assembly, if they were not to be enslaved: that it was necessary in a public view, that every Canadian subject should have this satisfaction, that if any were found trampling upon private rights, they might be brought before a jury, and by that jury be obliged to make satisfaction. That when the legislature is established, and that great security of liberty taken away, a free assembly, chosen as the House of Commons is, it will be the more necessary that this less obvious security of liberty should remain; for if this be taken away too, the consequence will be, that persons injured by the jury will have very little reason to hope for redress. They will have none to apply to but judges holding office at the pleasure of the governor, and certainly at the pleasure of the Crown.

Mr. Mansfield having concluded, Mr. Edward Walls and Mr. Samuel Morin were called in, and examined. They both spoke in favour of the English laws being introduced into Canada ; and stated, that the English residents highly approved of the trial by jury, and were of opinion, that an annihilation of that right would be very injurious to the colony.

*Thursday, June 2.*

Mr. *Baker*,<sup>(1)</sup> before the House went into the committee upon the bill, said, he wished just to observe, that he was surprised to see such an inattention to, and such a general ignorance of, maps. The country which Mr. Penn claimed under his charter, though fully recited in the commission, could not be fully comprehended without having a map. He would have honourable gentlemen not only consider the words, but apply themselves to the best maps ; for, if the bill was fully examined, there were, he was sure, parts in the first enacting clause, that could not be suffered to stand.

The House then resolved itself into a committee upon the bill, when Mr. Mackworth moved, that General Carleton should be called in. The General was accordingly called in, and examined as follows :

EXAMINATION OF GENERAL CARLETON, GOVERNOR-GENERAL  
OF CANADA.<sup>(2)</sup>

Will you give the committee an account of the commerce and

(<sup>1</sup>) William Baker, esq., at this time member for Plympton, and afterwards representative for Hertfordshire in five parliaments. He had married Juliana, daughter of Thomas Penn, esq., of Stoke Pogies.

(<sup>2</sup>) In 1758, General Carleton accompanied General Amherst to America, where he distinguished himself at the siege of Quebec. In 1772, he was appointed governor of Canada ; in 1776, nominated a knight of the bath ; in 1777, made lieutenant-general ; in 1781, appointed to succeed Sir Henry Clinton as commander-in-chief in America ; in 1786, again appointed governor of Quebec, Nova Scotia, and New Brunswick, and raised to the peerage by the title of Lord Dorchester. He died in 1808.

government of Canada, when you first arrived in that country as governor?—I am not prepared to give an account of the trade; it would extend very far, and require several papers which I have not here.

I beg you to give an account of the state of the government at that time.—In what respect?

I understood when you went over as governor, that you established a form of government. In what manner was the civil government carried on in Canada?—The civil government consisted of a governor and council. They were authorized to make laws and regulations in the province, under certain restrictions. Both the questions are extremely wide; I do not know precisely what the gentleman's ideas are. If I had thought it essential, I would have procured papers from the Custom-House of the imports and exports. If I had lived in the country fifty years, I should not have been able to give a precise account, without having the papers in my hand.

What was the mode of proceeding in the courts of justice when you arrived there?—The justice of the province was distributed by two courts, the Supreme Court and the Court of Common Pleas, and likewise by other courts which had power more restrained and confined than the Court of Common Pleas.

What was the form of trial in the Court of King's Bench?—I hope the committee will not expect I should state that with accuracy. The chief justice should do it. I think the Supreme Court or Court of King's Bench, was according to the English form.

General *Conway*.—I do not mean to object to the question of the honourable gentleman, but I submit to his consideration, whether as we are to hear the chief justice, and the attorney-general of Quebec, it is not more proper to put the question to them.

Mr. *Mackworth*.—Were any objections made to that mode of trial?—There are two sets of people in Canada: one, those who call themselves the ancient subjects, the other the new subjects. The first are very well satisfied with the form of justice administered in the Court of King's Bench; the other, the newly acquired subjects, are extremely satisfied with the integrity of the court,

but extremely dissatisfied with the mode of trial. Their dissatisfaction arises, first from the great expense that the court draws them into; and in the next place, from all the proceedings being in a language they do not understand: they are likewise not satisfied with juries. They are extremely flattered and pleased that there are to be juries; that they are to be admitted to be of the number; but they think it very strange that the English residing in Canada should prefer to have matters of law decided by tailors and shoemakers, mixed up with respectable gentlemen in trade and commerce; that they should prefer their decision to that of the judge.

Have they been dissatisfied with the judgments that have passed in the Court of King's Bench?—I cannot say I ever heard a complaint of the kind.

If juries were composed of the species of men such as they approved of, would they disapprove of the mode of trial by jury?—The great object with the Canadians would be to procure justice; and to procure it at a reasonable and moderate expense: these are the essential points. As to the mode of trial, whether by jury or by the judge, they would prefer the latter from custom, habit, and education. I am not authorized to speak for the Canadians, to assert that they absolutely pray against juries. They certainly are attached to their own customs and manners. I am willing to give as much information as is in my power, but the chief justice is much better qualified than I am.

If the expense was moderate, and the jury composed of proper men, would they object to that mode of trial on account of thinking they should not have justice done them in the trial?—I cannot say that the Canadians would wish to adopt it: on the contrary, I have heard them make objections to it. How far those objections will carry weight, I know not.

Is not the trial by jury in the Court of Common Pleas optional?—I understand so.

Do you know that the Canadians of late, in the trials in that court, have chosen the trial by jury to decide their causes?—In general, I understand not.

Can you give any authentic account of the number of Protestant subjects now in the province of Quebec?—I had the return of the province last April of the number of Protestants in the

year 1770. By that return, I believe, every body who calls himself a Protestant is included. By that account they are under four hundred men, about three hundred and sixty, besides women and children, in the whole colony of Canada. I am afraid their numbers are diminished since.

Do you think the diminution of the number of British subjects is an advantage or disadvantage to the province?—That is a political question. I am afraid their circumstances have been so reduced, as to compel them to quit the province; I speak from humanity. I do not mean to give any political opinion upon the subject.

In general, are these three hundred and sixty persons composed of men of substance and property in the province?—There are some who have purchased lands—officers, or reduced officers; some very respectable merchants; there are other inferior officers in trade, and a good many disbanded soldiers. In general, they are composed of people of small property.

What do you think may be the number of the new subjects of Canada?—About one hundred and fifty thousand souls; all Roman Catholics.

In the conversation you have had with the Canadians in general, are they not very earnest for the restitution of the ancient Canadian laws?—They were very much so, when I was in the province; and by the accounts I have received since I came to England, they still continue very earnest indeed, and anxious about it.

Have they expressed lately any apprehension on seeing plans of government sent over, that those plans should take place, or any satisfaction or desire that they should?—They have expressed great uneasiness at the apprehension, and more warmth than is usual for that people. They seem determined to form associations and compacts to resist the English law, if they should be compelled to do it, as far as they could do so with decency, and their duty to the government would permit.

Have the clergy in Canada since the peace enjoyed and received the tithes and parochial dues?—They have received the tithes and parochial dues as formerly; there may be some who have not, but very few; as few as those gentlemen who receive their rents; they are as well paid as the rents.



Mr. *Charles Fox*.—Did they receive the tithes and dues only from the Roman Catholics, or from the Protestants likewise?—I really do not know; there are so few Protestants that cultivate the land.

Was there an idea that the Protestant landholders were exempt from paying tithe?—I have heard some of the clergy say, that in the uncertain state of things, they would not ask the Protestants to pay unless they chose it: as there were opinions spread among them, that it was not agreeable to the English law to try the right, they would have to encounter the great expence of the law. I think it induced them to act with great moderation and discretion in the matter; hoping in a short time, that the laws would be ascertained, that they might know what ought to be paid and what not.

Did those few British subjects inhabit the towns of Quebec and Montreal?—Chiefly; there are very few in the country, so few, that they are scarcely to be seen in travelling through it, as there are but three hundred and sixty in a district of three hundred miles long, and very wide.

Lord *North*.—Is not the cultivation of the lands entirely in the hands of the Canadians?—Almost entirely.

What part of the trade is in the hands of the Canadians?—I have heard about two-thirds.

Is not the trade much increased?—I understand the trade is increased very much.

Do you attribute that increase to the trial by jury, or introducing so much of the English law as has been introduced?—No; they have no dependence upon that at all.

Can you assign any probable reason to what it is to be attributed?—The colony of Quebec was in its state of infancy; it is so still, in some measure. They have been now fourteen years quiet. The country has peopled very fast; besides the natural increase of population, there have been a great many Acadians, who had come into the province; people taken from America and Nova Scotia, that were scattered in the province during the course of the war. As the people multiply, they act as a sort of farmers; they take possession of the lands behind their own, so that they go on cultivating the country very fast.

Do you not think the old inhabitant in Canada is receiving

considerable advantage from the change of the disposition of the inhabitants, from a military to a commercial life?—No doubt he is. Under the French government, the spirit of the government was military, and conquest was the chief object; very large detachments were sent up every year to the Ohio, and other interior parts of the continent of North America. This drew them from their land, prevented their marriages, and great numbers of them perished in those different services they were sent upon. Since the conquest, they have enjoyed peace and tranquillity; they have had more time and leisure to cultivate their land, and have had more time to extend their settlements backwards; the natural consequence of which is, that wheat is grown in great abundance. I have been very well informed, that we have exported large quantities of wheat.

Colonel *Barré*.—I submit, whether it would not be better to go through one particular part first, without going into any other.

Lord *North*.—It is almost impossible. No man can know how many questions every particular member has to ask upon this point.

Colonel *Barré*.—I have only one question to ask upon that point, reserving myself to ask others; it follows from the noble lord's question. If by any means that same warlike spirit was introduced again, would it not introduce the like disagreeable and bad consequences?—I take it, that a spirit of war in that, and in all countries, is very much against population and the cultivation of land.

What measures in that country would put an end to this spirit?—Their being subdued by the people they meant to conquer.

Lord *North*.—Has not the increase of the agriculture been the principal cause of the increase of the commerce?—It is so understood.

Do you not understand, that the great capitals of our merchants, their great knowledge, and their spirit in trade, have likewise contributed to the increase of it?—I believe they may have been of advantage.

Are the Canadian inhabitants desirous of having assemblies in the province?—Certainly not.

Have they not thought with horror of an assembly in the

country, if it should be composed of the old British inhabitants now resident there?—No doubt it would give them great offence.

Would they not greatly prefer a government by the governor and legislative council to such an assembly?—No doubt they would.

Do you not think a free exportation of corn contributed to the encouragement of population and agriculture, as much as any of the foregoing causes?—The population was the first effect; the cultivation of the land was the consequence.

Was it necessary to have any land to be qualified to serve on a jury in the country?—I believe there is very little nicety in that matter; there is too great a scarcity of Protestants. I beg leave to add, in the list of jurors I mentioned, there were a great number of disbanded soldiers that kept tippling houses.

Is that the only idea of the assembly, that you ever knew suggested to the Canadians, and to which they returned their answer?—I put the question to several of the Canadians. They told me assemblies had drawn upon the other colonies so much distress, had occasioned such riots and confusion, that they wished never to have one of any kind whatever.

Did not the Canadians likewise think, that assemblies would draw upon them expences as well as distress?—By distress I meant the displeasure of this country. No, they never stated that.

Have you never heard, that they imagined they should be obliged to pay the expence of government as soon as they had assemblies, but that until they had them they were not to pay the expence?—No, that was not the idea of the Canadians; they dislike it as not being conformable to their ancient customs.

Do you mean indiscriminately the whole law, civil and criminal?—The civil law.

Do you think, if all their customs of descent and heritage were preserved, that they would be dissatisfied with the introduction of trial by jury?—With regard to any portion of their law, one custom separate from another, I believe they would be extremely hurt to have any part of their customs taken from them, except where the commercial interest of the country may require a reasonable preference, and such commercial laws as can be especially mentioned to them. I believe they would make no objection

to any such commercial laws, if they may know what those laws are. But laws in the bulk, which nobody can explain to them, they think would be delivering them over a prey to every body that goes there as an attorney or lawyer.

Was the dissatisfaction expressed by the Canadians at large, or by the corps of noblesse?—They were pretty unanimous in most points; as unanimous as so large a body could be expected to be.

Are the noblesse better pleased with a jury in criminal causes?—I never heard objections made to the criminal law, except in one instance. Very soon after I went into the province, there were some Canadian gentlemen and some English gentlemen arrested for a very great crime indeed. They were accused of a very great crime indeed. They were committed to gaol until the next trial. It was the unanimous sense of the province that they were innocent, and they were found innocent at their trial. Upon that occasion, I heard several of the Canadian noblesse complain of the English law; but, upon my word, I recollect no complaint of the criminal law but upon that occasion.

What was the nature of the complaint?—They complained that, upon the deposition of one man of very bad fame, gentlemen should be committed to prison, and there remain a considerable time before they could come upon their trial. They said, that under the former law, more than one information would have been taken, and an inquiry made by the King's attorney-general, and that those gentlemen would not have been arrested if such information had been taken, as their innocence by that means would have appeared.

Has there been any other trial by jury for a capital offence?—I do not remember to have heard of any.

Have there been any considerable number of trials for offences among the common people?—Very few, to my knowledge.

What number of these noblesse is there in this country?—My memory will not suffer me to tell.

Nearly?—I suppose a hundred and fifty; I speak at random.

What is the occupation of them; do any of them trade?—I believe very few; they are not fond of trade. They have been brought up in the troops; they do not apparently trade; perhaps they may have connexions with some that do.

Do you know from the Canadians themselves, what sort of ad-

ministration of justice prevailed under the French government, whether pure or corrupt?—Very pure in general; I never heard complaints of the administration of justice under the French government.

Was it so pure, that there was no room for favour from the judge?—The intendant of the province was chief in matters of justice.

What was his general character?—With regard to his character as chief justice, I believe it was unexceptionable. It can never be the interest of a sensible man to connive at, or suffer, iniquity in courts of justice. The matters in dispute are very small between neighbour and neighbour, and he would only incense the people for very little purpose. The French intendant had other methods of making large sums of money, and enriching his favourites, if he had a mind to do it.

Was the administration of justice, in the other branch, equally pure?—He was at the head of all justice. He had his delegates, who presided in small matters in the other parts of the province. There was an appeal from the others to the intendant.

Were the decisions of the court in the three districts always just?—I believe so; I never heard any complaints from the people, that the courts of justice were not properly administered. I have heard of great fortunes made in another manner.

If their favourite laws and favourite customs were preserved to them, would they not, in every other case, take the law of England?—They do not know what the law of England is; they call the law of England the mode of administering justice. They do not know the difference between Canadian law and English, in the mode of administering it. The essential laws of England, in deciding matters of property, they have not the least idea of. The intelligent part of the Canadians think and hope, that their laws and customs may be continued, because they know what they are.

Have the intelligent part of the Canadians any idea of the law of habeas corpus?—I believe not the least. I do not say there are no gentlemen who have made it their particular study.

Are there any number of the professors of the law, capable of instructing them in the law there?—There is a Mr. Taylor, attorney-general; there is a Mr. ———, secretary. I would not venture to say there is one lawyer in the whole province who

has been at the bar in England; I may be mistaken. I do not know one that ever was at the bar as a lawyer. [This occasioned a great laugh.]

Then I understand you do not imagine that any other person but those two are barristers?—Not to my knowledge.

In general, have not the British subjects in Canada and the old subjects intercourse with one another?—They have very little society.

Do the Canadians in general communicate their sentiments to the British subjects at all, or to the officers, &c.?—They are very decent people, and communicate their sentiments only to those whom the King has appointed to receive them.

Has there been, by the supreme council established, any summary trial for small matters in the different parts of the province?—Yes; the justices of the peace formerly had authority to try small causes.

Were any of the Canadian gentlemen among those justices?—Not one.

Did there exist in the French government any summary mode of proceeding in the country?—Yes; some of the seigneurs had a right to hold courts of justice. They almost all had a right; but few exercised that right.

Has that been taken away under the English government, or more exercised?—Entirely taken away; besides that right, which the seigneur of the original tenure has, there was what is called the right of proceeding as delegates to different parts of the province.

Are those delegates resident inhabitants, who have a commission something like justices of the peace in England?—They were creditable people of good understanding. There was scarcely such a thing as a lawyer admitted into the colony, under the French government, except the King's lawyers; I mean regularly educated lawyers. There were attornies and notaries.

Do you conceive the people of the country to be at all informed of the French law they lived under?—They understand the French law from education, as the people of England understand the English law from education, from the customs and usages of the place.

Do they understand more than the general custom of descent

and heritage, and the mode of conveying property in that country?—They understand in all respects whatever comes before them. All the French law was not introduced into Canada. They are acquainted with the laws of property generally, and the custom of Canada; but as to the other laws of Paris, they are not introduced: they are as much unknown to them as the law of England.

Is there any code of Canadian law published?—There are law books, and some that contain precisely the laws and customs of Paris, from whence the Canadian laws are derived. There are, besides these, a collection of the customs of Canada, as far as they are able to procure them, which I understand is published.

Has there been any plan proposed since you have been governor, or any in your predecessor's time, to determine causes of small value?—I do not know that there is any plan. They have no sort of intermeddling with the administration of justice, but in juries.

Would not that have removed their objection to the English government, and given general satisfaction in the country?—The administration of justice by the seigneurs was rather a tax upon them; there were very few that exercised it. Since I have been there, they have applied to me to know whether they might not exercise it; or to know, whether it was taken from them. I said, I wished they would let the matter lie dormant till something was finally determined.

What is the wish of the people who would be subject to this jurisdiction? Do they wish to be tried without expence, and upon the spot?—They were under some check under the French government. They certainly were not delivered up to their mercy: there was an immediate appeal to the King's courts of justice. They were under the check of the King's courts of justice, and the King's attorney-general brought every thing up immediately.

Might not some alterations have made that very agreeable, such as might have enabled them to bring small suits to immediate issue?—They are very much attached to their ancient customs. They were so much dissatisfied with the people to whom commissions of the peace were granted in different parts of the province, that I was obliged to take away their power. It never was much trusted into the hands of the French.

Were all the judges in all the courts of justice in Canada bred to the law?—No.

Were any more than the chief justice of the King's Bench?—I believe not one.

Were the Canadians made aware by those persons, that a jury in civil actions have nothing to do with the law?—They have a very confused idea of the English law.

What was the nature of those decent compacts and associations they were determined to enter into, to resist the laws of this country?—To bind themselves in all marriage contracts, as strictly as it was in their power to do, that all their possessions should go according to the Canadian customs, and in general to adhere to that as closely and firmly as possible.

Did the supreme legislative council ever make any laws to secure property, according to the Canadian customs?—There were some ordinances made; but I never could learn that anything was clear or certain in the law, nor did I understand clearly what was the law and custom; nor does it seem to be a clear question in the country. I have heard the same man argue for the English law in one cause, because it suited his cause, and I have heard him argue for the French law in another cause. There is an ordinance for quieting the minds of the Canadian subjects, directing the court of common pleas to decide agreeably to the laws and customs of Canada, in adhering as much as possible to the laws of England. There is also an appeal to the supreme court of equity, which is directed by the common laws of England.

Would two-thirds be satisfied to have their suits, relative to debts in the country, decided by the Canadian law?—I believe not.

Have they any regular method of conveying their sense at present?—I understand they have conveyed it in petitions. When I was in the province, seeing great heats and animosities upon every occasion in various sorts of people, and that petitions of all kinds greatly incited these animosities, I dissuaded them, as much as it was in my power, from measures of that sort. Before my arrival they had expressed their desire in a petition to the King. They frequently repeated the substance of that petition, as their earnest desire and wish, and would have drawn up a fresh one, had I not dissuaded them from so doing. My reason was, that I wished them to wait till the King should think proper to reply to their petition. During my residence, upon all occasions, all



sorts of people expressed the same wish and desire as in the petition, which I understood to be the petition sent before my arrival. I understand that since I have been in England, they have expressed the same wish and desire by fresh petitions, for fear the former one should be forgot. I assured them that in due time proper attention would be paid to it and justice be done; and that in the mean time, they ought to rest satisfied with the good-will and intention of this country towards them. I saw a letter, or paper, asking two Canadian gentlemen, in case I had not been here, to act for them as their agent, to present this petition.

Are the Canadians aware that an assembly into which they were admitted would be a legal and decent method of making the sense of the inhabitants known, or have they been led to look upon all representations of assemblies as factions, &c.?—I believe they have no idea of assemblies, but what they receive from the newspapers, and the accounts that come from the other provinces.

Have, or have not, any pains been taken to explain to such persons the excellence of such a constitution, and the advantages that would arise from it, or have they been left to conjecture?—It is a difficult matter to instruct a whole people in lessons of politics, and I have never attempted it.

At the time the apprehensions of the Canadians were signified to the officers of government, had there been no conference among the principal people in Canada? Had there been no conference with the governor, to hit upon the form of government most agreeable to the people?—They had frequently expressed their desire and prayer to have their ancient usages restored to them; and stated that the form of government which came nearest their ancient usages would be most agreeable to them.

Did they state what those usages and customs were, to the persons to whom they applied?—They were in general words, and are expressed in the petition. All conversations upon the subject were to the same effect.

Do you conceive it would be impracticable at this time, without giving general lessons of politics to all the people, to explain the advantages they would derive from the English government, without the abolition of all their usages?—They have very often told me, that during the military government, the English fre-

quently expressed to them the happiness, and great advantages they would receive, by the introduction of the laws of the English government, and by the protection of the civil laws of the country; that they were to become a happy people by the change. Several years after, when they had experienced what it was, and found that they were debarred of what they looked upon as the civil rights of subjects, and that they understood that, as Roman Catholics, they could not enjoy places of profit, or trust, or honour, they thought it was adding mockery and insult to severity; and were astonished that people could hold such language to them.

Was it ever suggested to them, that the difficulty could be got over, and that the Roman Catholics might be admitted to some share in the government?—I have often told them that I believed it would be the case in time.

Did you ever hear of any of the principal Canadians expressing a wish that, until there was an assembly established, the council established by the King should be so modified, as to bear as near a relation as possible to the moderate principles of the constitution of this country?—I often heard them express a wish, that Canadians should be admitted into the council: I never heard anything further.

How was the legislative council composed in the French government? Had Canadians a share?—It was more a council of justice than of state, and more a council to receive appeals than to make laws: they made certain small regulations. The governor was chief of the council: the intendant was president, and he collected the voices. There were a certain number of the Canadian inhabitants that were of the council likewise.

As to the population of Canada, you said there were three hundred miles of settled country from the island of Coudres to above Montreal?—I did not say that all that country was settled. Some of the people reside at ———, which is very far up indeed. The lower part cannot be cultivated, as I understand.

Does not the peopled part of the country extend for about three hundred miles?—More. I believe above three hundred miles.

What outposts are there; how far do they extend, and how popu-

lous? Which of those settlements are under your government?—It would be a very difficult matter to give a clear idea. There are next to none below the island of Coudres. The lands cannot be cultivated. It would require a survey, and notes upon it, to give a proper answer.

I did not mean to trouble you to enter into a minute detail: I meant in the gross. I meant to convey my idea, that the country is exceedingly populous. Exclusive of the populous country, are there any other settlements, and to what extent?—When I said three hundred miles, I understood from the island of \_\_\_\_\_, not from the island of Coudres. Upon the north side there are a few; upon the south side a great many.

I wish to know, in general, the furthest west point of the settled populous country?—From the island of \_\_\_\_\_ it is tolerably populous; upon the north side of the river, it goes above the \_\_\_\_\_ settlement of the savages. I forget their names.

How far above Montreal?—Not fifty miles.

Are there any considerable settlements any where within your government?—The inhabitants are chiefly along the sides of the rivers, upon the small rivers that run into the great river; where their communication by water is most convenient, and where the land is cleared.

Are there any considerable bodies of people, to the amount of a hundred, settled within five hundred miles above Montreal?—That is without my province. There is no part of the province five hundred miles.

What is the defined limit?—It is in the proclamation.

Did not the intendant, together with the superior council, make several legislative regulations?—They did make some; particularly those which are adapted to the local constitution of the province, and where the laws and customs of Paris could not be applied, without a great deal of absurdity; the circumstances of their situation being so very different.

In some cases where the intendant thought it was for the service of his master, did he not make some regulations without the consent of the council, upon his own authority alone, in civil matters?—I understand in many cases he did; but I understand,

in matters of importance, it was necessary that the King's governor should sign as well as he.

Are you acquainted with one Le Brun?—Yes; I know a great deal of him.

Do you think he is likely to be acquainted with, or to report justly, the general sentiments of the Canadians?—That you may the better judge of the credit to be given to that gentleman's reports, it is necessary I should tell you he was transported for being a blackguard, and impressed into the French troops in Canada. He was not transported as a vagabond, in such manner as a justice of the peace would send one. When he belonged to the French troops in Canada he robbed, or was accused of having robbed, the artillery stores. He was committed to gaol, from whence he made his escape during the troubles in Canada. I did hear that when Mr. Amherst came down the river he joined him, and was useful to him. That procured him the first favour of general Gage, afterwards of general Murray. I am sure it procured him my protection and favour. The report that he had been useful to an English general was sufficient. His behaviour was so bad upon every occasion, that I was obliged to give him up. He afterwards was accused of very dirty offences with young children, girls of nine or ten years old, and was fined by the justices of the peace, I think, in twenty pounds. A petition was brought me, praying to have the fine taken off, and that he might be permitted to live in the province. At the request of the justices of the peace, I granted his petition. I think he was in gaol at the time.

General Carleton was ordered to withdraw.

Mr. *James Townshend*.—For what purpose is this gentleman's name introduced?

Mr. *T. Townshend*, jun.—If it was from any question I asked, the noble lord is very much mistaken. I wish to know whether he is or is not mistaken, as to Mr. Le Brun.

Lord *North*.—I know he was the person who gave his evidence, that it was in general the desire of the province that they should have assemblies. Knowing that, I inquired if he was likely to be acquainted with their interests.

Captain *Phipps*.—In examining into what method the Cana-

dians had taken to suggest their inclinations, I think it fair to go into an inquiry, whether those persons who gave their evidence were likely to know. I think it is right the committee should know whether he was likely to be entrusted with the inclinations of the Canadians.

Mr. *T. Townshend*, jun.—There is a paper upon your table, signed by many names, in which are these expressions: "It is the opinion the people have in that government," [see the paper]: I shall be glad if the noble lord will confine himself not to Mr. Le Brun, but go on, and ask general Carleton questions.

Lord *North*.—This is the strangest thing in the world. Did I ever confine myself to Mr. Le Brun? As he had written to England, did I not know that what he wrote had been laid before a part of the administration? When we are inquiring into what the Canadians desire, as to particular forms, is it not regular to know them from somebody? I do not say he signed that petition; but I say, before I give credit to his opinion, I must know whether it is to be credited.

Mr. *James Townshend*.—I interrupted the examination from a principle of order. I think it extremely disorderly to criminate the character of this man before this assembly. Nothing has appeared against Mr. Le Brun. When charges are going on, it becomes every man in this assembly to take care men's names are not improperly introduced. Not knowing anything of Mr. Le Brun, I say when he is brought to prove any fact, then is the time to criminate him, or to say anything in his favour. I think it became me to get up.

Lord *North*.—My question was this, Do you know that Mr. Le Brun was a person likely to be informed of the opinions of the Canadians, or whether his evidence is to be relied upon? The witness did not answer directly, No; but said, "In order to explain," &c., and left the committee to judge. I will not ask any more questions about Mr. Le Brun, unless his name is mentioned; but when a course of inquiry went in giving marks of their favour, I thought it was necessary to know what those marks were.

Captain *Phipps*.—I will only state to the committee, as far as anything dropped from me, that I never heard Mr. Le Brun's name before the noble lord asked the question.

General Carleton was then called in again, and asked :

How long were you governor of Quebec, and resident ? Are you not governor now ?—I am governor now. I was in the province as governor, or lieutenant-governor, commanding in the province, about four years.

Did you not, during the time of your being governor, endeavour to learn the manners, temper, and genius of the people over whom you presided ?—No doubt.

From the knowledge and experience you have of those people, do you think they would choose to have the English law as a rule to govern them, both in matters of property and matters of crime ; or in either, and which of them ?—The Canadians are very anxious to have Canadian law to decide in matters of property. I believe they are pretty indifferent in regard to criminal law.

Is that your judgment, formed from your knowledge and experience of them ?—It is.

Do you not imagine that the aversion they have expressed to the English law is because they think it is likely to interrupt the course of descent and inheritance, and to load them with incapacities as Roman Catholics ?—The partiality and attachment which they have to the laws and customs they possess is well known ; and they apprehend that laws unknown to them may introduce something terrible to them ; they know not what.

Is there not a great difference between the criminal laws of the two countries ?—The criminal law they have experienced is, in fact, not so extremely different. The mode of prosecution, the mode of deciding by the law, is very different ; but the trial of great crimes, in nearly all civilized countries, is almost entirely the same.

Are there not more punishments in the law of England than in the law of Canada ?—I believe there are : I cannot pronounce.

Was their dislike to the English law uniform from the beginning ?—From the time they first experienced it, they very soon found a great difference in the expense, which was very grievous and oppressive to them ; not from any defect in the characters of the gentlemen ; but the wealth of the country, compared to this, is extremely small. Fees of all sorts, though not unreasonable in this country, were considered extremely heavy in that.

Did they not complain, that the proceedings were held in a language they did not understand; and that no Canadian advocates were permitted to plead in the courts?—That was a great complaint indeed, till it was remedied.

When that was remedied, did they then express as great dislike as they did before?—The expense continued pretty much the same; the satisfaction was greater, having then lawyers that could plead in the language they knew. I believe there has been very little of that in the supreme court.

Have you seen an act passed in the other House relative to Canada?—I have.

Do you think that bill gives the freest form of government to Canada it is susceptible of?—I should think it the best form advisable to give in the present state of the colony.

During the time the English law was executed, had they any such thing as regular gaol deliveries?—I understand the chief justice is to attend. It is a question much more applicable to him.

Were not people apprehended by the power of the intendant and attorney-general, and detained without any kind of assistance from any other place?—I never heard any complaint of the kind.

Do you not know there was some officer that had that power?—I do not know he had the power, but he may have acted from his own caprice or fancy.

Where was that power vested?—The power was in the intendant, and likewise in the attorney-general.

Was any person ever prosecuted?—I really do not know that any one was.

Did the mode of trial upon court-martials for military offences, during the French government, give any offence?—No.

Were they not tried by some council of officers of the corps?—I should imagine they were tried by the corps of military men.

Had they any objection to that mode of trial?—I never heard they had.

Were the noblesse not very fond of military rank and distinction before the conquest?—They were almost all military men, and of course fond of rank and distinction.

Do they enjoy such gratifications now?—I do not know that

any of the Canadians in Canada enjoy any gratifications from the court of France.

Do they enjoy any under the English government?—None.

Would it not be flattering to them to enjoy some rank?—Undoubtedly.

Would it be more pleasing to have a share in the government?—Undoubtedly.

If his Majesty did not choose to appoint any particular persons in the place to a share of government, would they not be glad of having other lawful and honourable means of providing for themselves?—No doubt.

Do not the gentlemen of Canada form some opinion relative to the welfare and prosperity of their own country? Is not that a matter of discussion among them?—It has been a matter agitated very much; but they seem to confine their ideas chiefly to the restoration of their laws and customs, and wish that all distinction should be taken away which separates them from the English subjects. By that I understand the admission into places and offices of trust and honour, equally with the English.

Would they be glad to be in such a situation as to make this idea of theirs prevalent?—No doubt.

Have they such objections to the form of an assembly, as to wish to make their ideas prevalent in such assembly?—They do not wish for assemblies; but if assemblies must be, no doubt they would wish them to be a free representation of the people. If that should be the case, they would compose a great part of that assembly.

Would they have an objection to a seat in such an assembly, in which they might have an opportunity of delivering their opinions?—They never had an assembly, or anything like an assembly, nor have they the least desire to have one; but if there should be one they wish to have a share in it.

Have they any particular objection to arbitration?—Very far from an objection to it. In a great measure they have come into it, wishing to keep clear of the courts of justice.

Could they, therefore, have any objection to have causes decided by gentlemen of the country?—They would wish very much to have their causes decided by gentlemen bred up in the country; acquainted with their laws, usages, and language.



They would give the preference to judges; but I do not know whether they would make any violent opposition to juries, if this country should think them advantageous. They confined their petition mostly to general points. I do not know how far they would make juries an essential point.

Many members calling out, Withdraw!

Mr. *Mackworth* said:—I think it is a little hard the committee will not give me leave to ask a few questions, as the general attended at my request.

Mr. *Baker*.—If general Carleton is too tired, he may refresh himself.

Sir *Charles Whitworth*, chairman, asked him, if he would choose to retire? The general said, he would rather retire for a little while.

Lord *North*.—Before we go into another motion, I submit, whether it is necessary the clerk should set down the whole of the questions and answers, or the substance of them.

Sir *George Yonge*.—The answers must be taken down.

Mr. *Cavendish*.—I apprehend it will be proper to take down the evidence correctly, or not at all. It is to the clerk's minutes alone that gentlemen can refer, so as to debate orderly upon the evidence.

General Carleton's retiring occasioned some little embarrassment about the mode of proceeding. Some gentlemen were for going on with the evidence, before the general was examined again. Lord *North* said, it was better to go on now. Upon which Mr. *William Burke* said, I will take his advice, first, because it is his advice, next, because I am not likely to do otherwise. Many members calling out Order! order! he said, let any gentleman get up and say, where I am out of order. I suppose you do not choose to put the question. I meant no affront to any man.

Sir *Charles Whitworth*.—When a question is put to the chair, I apprehend that question must be disposed of. Gentlemen may debate the question, and give their reasons for giving it a negative; but my duty is to put, without favour or affection, every question that is put to me.

Mr. *William Burke*.—I humbly conceive no question can be put. That gentleman must be called in again. I say it is disorderly, that any question should be put.

Sir *Charles Whitworth*.—There must be a question put, until general Carleton is moved for to come again. The question has been moved that Mr. Maseres be called in. I have put that question.

Sir *George Yonge*.—I understood that general Carleton was permitted to retire in order to refresh himself. I submit to the House, whether there is any objection to Mr. Maseres being called in. I will say this, that when he is called in and examined, he will be fatigued, the committee also will be fatigued. They will not go through his evidence; so you will have a little bit of general Carleton's evidence, and a little bit of Mr. Maseres. It will be better to go through one examination: otherwise, I do not think we shall at all get forward.

Col. *Barré*.—We are spending our time to no purpose. We are wishing to have full information. We have had a great deal already; and we are to have a great deal more. General Carleton's evidence is not yet completed. It would be idle to say you would limit him in point of rest. The next question is, whether Mr. Maseres be called in. In the mean time, something has fallen from gentlemen which shews that we are, in this business, very much in the dark. The gentleman at your bar can only tell you what a few Canadians have told him. There is a gentleman now in this House, a native of the country, who has not enough of the English language to express himself readily. His examination will be short; and it will be easy to explain it. I do not know him by sight. I think the evidence of a native you cannot deny. If this bill is to pass into a law, let us make it as complete as we can.

Mr. *Cornwall*.—We are now in the course of hearing certain witnesses, and gentlemen want to have a preference; they want to hear one witness before another. I do not know enough of the subject to decide; but this I know, that the course of examination is such, that the gentleman may be kept three or four hours, and yet the whole of the information he can give the committee may be given in ten minutes. We are inquiring for information. We may differ about the degree of information that may or may not be satisfactory to all. I wish to stop none; but I wish not to lose time. I have the honour to belong to the profession, and I will say, that nothing is more difficult than to conduct the exa-

mination of a witness, so as to convey clear evidence to the parties. Here eight or ten gentlemen have been carrying the witness over the same ground.

Colonel *Barré*.—The honourable gentleman's observations upon the examination of evidence have undoubtedly much truth and propriety in them; but every body has not the same difficulty as himself. We wish to have our own questions put and answered. The noble lord canvassed the character of a certain M. Le Brun, who pretended he knew the opinion of the Canadians. The noble lord endeavoured to invalidate such an evidence. Now, if it was worth while to do that, it surely is worth while to examine M. Lotbinière.

Lord *North*.—I am acquainted with him. He is a gentleman of good parts and of good understanding; but I do not see any reason why he should take place of the motion.

Lord *John Cavendish*.—I am heartily tired of the attendance. I wish to go on; but it is a doubt, whether the calling Mr. Maseres will shorten our examination. General Carleton has been here three hours, and is to attend again. Many members who have not been here before may ask questions to-morrow. I wish to have general Carleton completely discharged. We have reason to think there is some difference of opinion between those gentlemen as to the state of the colony. Now, if Mr. Maseres be examined, general Carleton will be to be examined to answer his statements; and thus we shall get into a controversial examination.

The *Solicitor-General*.—When general Carleton went away from the bar, I understood it was his wish completely to retire. I apprehend no controversial examination is likely to take place. If any gentleman had moved for M. Lotbinière, I would not have opposed it. Nothing can be so idle as to debate for nearly an hour which of the witnesses shall be examined. The questions I shall put will be extremely few; but I will not answer for it, that his examination will be short.

Mr. *Cavendish*.—I beg leave to differ from the learned gentleman as to general Carleton's wish. I judge from the general's own words. You, sir, asked him, if he would choose to retire for a little while. Of course, I apprehend he could not suppose he was to retire completely.

*Mr. Howard.*—I wish to ask general Carleton whether he is sufficiently refreshed.

*Mr. Coventry.*—No question was put upon his retiring. Several witnesses have been five hours at the bar.

*Mr. Rice.*—He is the most valuable witness I ever heard in my life. The general stood at that bar some hours, and now no gentleman is a bit the wiser. If he is called in again, he will not take up half an hour.

*Sir Charles Whitworth.*—When a witness retires, it never is by question. Members call out, Withdraw! and he is brought in again by question.

*Mr. Coventry.*—I move that Mr. Maseres be called in.

Mr. Maseres was accordingly called in; upon which, Mr. William Burke immediately desired he might withdraw.

*Mr. Baker.*—It is what I wished to do; but I apprehend the honourable gentleman has done it in a disorderly manner. For a witness to withdraw before any question has been put to him, is contrary to order.

Many members called out, No! no! no! General Carleton being called in, stated, that it would be inconvenient for him to give a longer attendance now. He was told he might attend on another day.

EXAMINATION OF FRANCIS MASERES, ESQ., LATE ATTORNEY-GENERAL OF QUEBEC.<sup>(1)</sup>

Mr. Maseres was then called in, and acquainted the committee, that he went to Canada in 1766, and resided there three years. He was then asked,

What were the sentiments of the Canadian inhabitants, upon the supposition that the laws of England would be of no more authority among them, by reason of the proclamation?—A great many were very uneasy upon the apprehension of a sudden change of the laws respecting family descent; such as dower, and the like.

What sentiments do they entertain of the form of judicature?—

<sup>(1)</sup> Mr. Maseres obtained the appointment of attorney-general of Quebec in 1766; from which situation he was, in August 1773, raised to the dignity of cursive baron of the exchequer. He died in 1824, at the advanced age of ninety-three.

I heard great complaints against the administration of justice. I endeavoured to sift them to the bottom. I think the result was the expense principally; partly the delay according to the mode of English administration. The expense did not consist principally in the fees of attorneys, but the provost-marshal's fees, which were thought intolerable. At the same time, I doubt much whether the provost-marshal did exact unreasonable fees; because, the two that acted there have assured me, they did not make fifty pounds a-year of their place. Whether they said true, I cannot tell. I have heard of the extravagance of the fees, and also of the great burthens of attorneys and advocates; but those fees are not now greater, but rather less.

Do you think the people have a strong attachment to our laws and customs?—I believe that the great body of the Canadians, with the exception, perhaps, of an hundredth part of the whole, would be very well satisfied with the establishment of those laws.

Were the people of Canada very apprehensive on account of the supposed danger to religion?—I never heard them express much apprehension with respect to any danger to their religion; but they have at times expressed dissatisfaction at the disqualification and civil inconvenience attending the exercise of their religion; not any that the performance of mass would ever be impeded.

What do you understand to be the sentiments of the Canadians with regard to the form of government they would wish to live under?—I have not heard many of the Canadians enter fully into the subject. I believe their opinion is that of our poet,

“Whate'er is best administer'd is best.”

They have no predilection at present in favour of a legislative council, or in favour of an assembly: I speak of the generality of the people. There are a few persons who have thought more upon the subject than the rest: I believe they would incline to an assembly.

What sort of an assembly do you suppose they would like: an assembly of which they might have a part, or one which consists of his Majesty's own subjects?—I have heard some of them say, they would rather have an assembly consisting equally of Protestants and Catholics, or at least of such Catholics as would take the

oath of abjuration of the pope's power, but not the declaration against transubstantiation,—than be governed by the legislative council. I have heard so; but in general those who express a wish for an assembly, wish for one without the exclusion of any Catholics on account of the oath:—I mean the oath as it now stands; I mean that which is commonly called the oath of supremacy. I do not know any instance of a Canadian taking that oath; but they have been under no temptation to do it. Hitherto they have had no assembly. As to being a part of the council, it would have been necessary to take the declaration against transubstantiation, as well as the oath of supremacy: therefore the distinction has not been tendered to them.

Do you think the Canadians are desirous of serving upon juries in civil causes?—I believe they would like to have the option of doing so continued to them. The ordinance that directed that court, directed the jury to be optional; and I know that many of the people do actually choose to have a jury, when their causes come to be decided there; which I look upon to be more conclusive than any testimony of opinions may be.

Would they perform the office of jurymen?—They sometimes complained of that as a burthen.

Were not the forms of proceeding according to the French law, in matters of contract and recovery of debts, exceedingly different from those which prevail under our law?—I believe they were. The mode of execution is different. They had not the law of imprisonment in execution for a common debt: but it was introduced by the special description, by that original ordinance that set out the courts of justice. Since that time they have made very frequent use of it; full as much as the British subjects, or more so.

Do they in civil causes look upon the difference as a hardship?—I do not know that they do. I recollect a circumstance in the execution of a process in civil causes, in which the Canadians did complain of the English law, until it was corrected: that was, there was too great haste made in selling their landed property in a hurrying secret manner, and at a small price, for less than it was worth, in order to pay their debts. That has been corrected by an ordinance of March 1770; and care has been taken to correct the process of imprisonment, which made them liable to im-

prisonment for debt even for the sum of twelvapence currency, in that part ninepence currency, by substituting the sum of forty shillings. The ordinance provides that an estate shall not be sold but after a proper time, and not at all for a debt less than twelve pounds.

Would not the Canadians think themselves happy without the restoration of their laws and customs, and if none of their forms of government were retained?—I think they would not be happy without the restoration of some of their family customs, as tenures of land, the mode of conveying, marriages, descent, and dower, and the rule in cases of persons dying intestate.

Do not the Canadians at present esteem it a burthen to be drawn from their homes to serve upon juries?—I have heard complaints of the kind.

Are you not of opinion that, in order to make a trial by jury more beneficial, it would be right for a certain allowance to be made to persons called to serve on juries?—I think it would. A small one would be sufficient: five shillings a man would make them wish to be called upon juries. I think that allowance should be paid by the party that requested the jury.

In any and in what degree might it be expedient to establish the civil jurisdiction of England, in preference to that of the French, for trials of civil property?—I received an answer from an able Canadian, M. Cugnet, to whom I have no reason to be partial, as he has written very spiritedly against my plan,—that the conquest was in itself a misfortune; and that they must bear with a great deal, he was sensible, in consequence of it; that the criminal law must be that of the conqueror, that is, *le loi du prince*; but that they must submit to it. He has further said, as to civil matters, that in point of justice, his Majesty ought to keep up all the ancient and civil laws of the Canadians; but even there he admits, that the form of administering justice must in the great courts be changed.

Would it be convenient, and for the interest of them as well as of us, that the trial by jury should be established?—I think so; more especially if optional, as it takes away all pretence of hardship.

Is not the province of Canada, by the superior spirit and great capitals of the English merchants, very much improved?—Very much.

Have not those merchants, who have so improved the province, engaged in those concerns and embarked their property there under the sanction of the English government?—Undoubtedly.

Do you think the property so embarked would be equally secure, if the common law of England with respect to civil trials was entirely abolished?—I rather think not equally secure. Certainly, they would not think it equally secure.

What proportion of the trade of the province is in the hands of the English merchants?—I can only tell from information I have received here in England: I am told it is seven-eighths. The increase of the trade is an undoubted certainty. I am inclined to think it is entirely owing to the industry of the English merchants.

Did not the intendant make regulations?—I have seen the commission of the intendant. I think there is a power given him singly, in certain cases, to make some regulations—not of the highest magnitude, but under some limitations, I cannot very well tell what.

Did not the intendant regulate the price of the corn of the country, when it exceeded the consumption of every family; fixing his own price upon a certain quantity?—I do not remember hearing that circumstance from any Canadian.

Do you think the English merchant would continue to embark his property in that country, if he had not the sanction of English law?—I believe it would be a great discouragement to him.

Would the Canadians admit a part of the English law, rather than lose those benefits they find from the introduction of English merchants among them?—I am persuaded they would. I apprehend, if the option was that the English merchants should cease to trade there, or that they should submit to have that part of the law, trial by jury, they would undoubtedly choose the latter.

Are not justices of the peace appointed to decide causes?—Upon the first establishment of the civil government, general Murray endeavoured to soften the change of conquest to the conquered people. The method of administering justice was as follows: he first established a supreme court of judicature, called the king's bench, in which the chief justice of the province singly was to preside, and which was directed to determine all matters criminal and civil according to the laws of England, taking himself to be bound to give those directions in consequence of the



King's proclamation. He also instituted, by the same ordinance, a court of common pleas, in which he directed the judge to determine all matters according to equity, having regard nevertheless to the laws of England, as far as the circumstances of the province would permit; and he gave an appeal from that court to the court of king's bench, which was directed to follow the laws of England strictly. He also instituted justices of the peace, and gave to each a power to determine civil matters, in a summary way, under five pounds of the currency of that province, about four pounds English.

Was not the tyrannical behaviour of those magistrates, in their department as judges, the cause of complaint among the Canadians?—Some did behave tyrannically, and their conduct gave rise to great complaints; others made use of their power so discreetly as to be a great blessing to the people. Of these, two were Frenchmen, Canadians, old subjects of old France before the conquest, both Protestants.

Were any of those men suspended from their offices?—None. The governor, instead of suspending them, made an ordinance, in March 1770, whereby he took away the civil jurisdiction of all justices of the peace. It was governor Carleton's ordinance.

From what cause was it taken away?—I do not know. It was a less odious way, perhaps, of disqualifying. It was a little while after I left the province.

I wish to know in general whether, if the English law was established in Canada,—the civil law—a few years' experience would not conciliate the Canadians in general to that form of judicature?—I am persuaded it would; and more especially if methods were taken to remove some of their objections. How far it may be expedient to take such measures the House will judge. One of their objections is to juries, from the necessity of being unanimous, which they sometimes ridicule, by calling it a method of trial by strength of body and power to fast longest. I conceive; therefore, that that trial would be more agreeable to them, if the majority of the jury were permitted to decide the verdict; but as it is, with all its inconveniences, I believe they would choose to have it in the manner it is, because I see they frequently make use of juries in causes of consequence.

If that could be the case, would it not be a means of increas-

ing their affection and attachment to the government of this country?—In my opinion it would.

Would it not more speedily alienate their affection from both the laws and the government of France?—I should think it would have that effect.

If that should be the case, would it not greatly promote the interest of the country and improve it?—I should think it would.

From your knowledge of the French laws, should you wish to see the property of English subjects decided by those laws, in preference to the Canadian?—My opinion is otherwise; but I am not able to balance the merit of the two codes of laws: I do not know enough of either of them.

If the French law should be established, do you apprehend there are judges sufficient in number, and of sufficient abilities, to administer justice properly to the English subjects?—I doubt it; and besides, while I was there, the Canadians were much better satisfied with the integrity and abilities of the English lawyers in latter times than of their own; so as to employ the English lawyers in the court of common pleas in many causes, in preference to their own Canadian lawyers, who have always been permitted, from the origin of the civil government, to practice in court.

In your judgment, would not the good object proposed by the re-establishing of the French laws and customs, be as well or better answered by retaining a system of English laws, with such alterations as it may be necessary to introduce?—I think that the best method of giving satisfaction.

Are not those parts in which you conceive an alteration to be necessary, in order to gratify the prejudices of the Canadians, principally confined to the tenure of land, the mode of succession, and the descent of property?—Yes; adding to it, conveying their lands, selling, marriages, tenures, &c. I believe I might add, they would be pleased with the continuation of the law relative to intestate effects. It might be easily cured of its defects by the power of making wills: it differs little from ours.

Are you possessed of knowledge enough of the French laws intended to be introduced by this bill to give judgment by them?—I should not like to undertake the task. The difficulty may be measured by M. Cugnet's endeavouring to prove that the French law is a matter of easy attainment. He tells us, in

the manuscript I have seen, it may be learned by the perusal of only thirty volumes in folio and quarto,

I beg to know your judgment upon the propriety of re-establishing the Catholic religion in Canada, and restoring to the clergy their ancient rights and dues, without a similar establishment for Protestants?—It is a very doubtful thing; and, unaccompanied with restraints upon the bishop's great power, may be of dangerous consequence. It is certainly not necessary to the satisfaction of the Canadians; because the option of paying tithe, or letting it alone, can never be disagreeable to them.

Do you understand that the Canadian subjects have at this time this option?—They certainly have, and sometimes make use of it. They never presume to sue for tithe, either in the court of king's bench or common pleas, knowing there is no possibility of succeeding. The ground of that opinion of theirs and of mine is, the strong words of general Amherst's answer to the demands on the part of the French general, for the continuation of the obligation of the people to pay their tithes and other dues: "Granted, as to the free exercise of their religion; but as to the obligation of paying tithes, that will depend upon the king's pleasure." That has been universally understood, till now, to have been a positive dispensing with the obligation. It has often happened that they have not paid tithe; much oftener that they did, from their regard to their religion.

Do you consider this bill to be a granting and confirming of this tithe?—The words of the bill are declaratory: the word "enacted" is not there. In my opinion, the right does exist at present. How far words declaring that to be law, which till this time is clearly understood not to be law, will operate as enacting words, I do not pretend to say.

Did you ever hear in Canada that the claim to tithe extended to Roman Catholic landholders, and not to Protestant landholders?—Every body paid tithe indiscriminately. Since that every body has been understood to be exempted from tithes indiscriminately.

Can you help us to a ground of distinction, upon which we might be induced to believe, that the right is a necessary one with regard to Catholic subjects, and not so with regard to Protestant subjects?—I cannot conceive any.

From your experience of the inclinations and expectations of the Canadians during your time, do you conceive their expectations went the length of imagining they should have this re-establishment of the Catholic religion made effective, relative to what is meant to be given them by this bill?—I believe they have been flattered with hopes of that kind, and I have reason to think promises of endeavouring to procure it have been made to them. How far they thought they would be successful, I cannot tell.

Would they have been induced to believe such would be the result, if no such promises had been made to them?—I am of opinion with sir Jeffery Amherst, that so far from it, if the priests had been permitted to remain in the possession of their livings, and their places had been supplied by Protestants, the Canadians would have been satisfied. They would have been satisfied, if that had been pursued from the beginning; but I do not mean to say, that so small a degree of indulgence, with respect to their religion, would be expedient now.

In your judgment, would not a less degree of indulgence than what is given by this bill content them?—I believe the hopes of the upper class of the people have been raised high. The others would be satisfied with less. Of one hundred and fifty, one hundred and forty-eight would be satisfied with little more than the security of their property, and those family laws I mentioned before. Very few that take the lead among them, make a complaint against the English government. Of the set of people who call themselves noblesse, amounting to not more than one hundred and fifty out of one hundred and fifty thousand—eight or ten, perhaps twelve, are noblesse according to the French ideas. Of which class there were fifty thousand families in France; I mean of the hereditary noblesse: but there are others, who associate themselves with these, and consider themselves upon the same footing—people who have held civil offices, noblesse for life, disbanded officers who had held commissions in the militia, or among regular troops—those people are most apt to complain. They fear the change of government the most: they even are, in some degree, envious of the success and prosperity of inferior people.

Do you not believe, that the most extravagant of the Canadian noblesse would think themselves perfectly well off, if the two

religions were sent into the country *pari passu*?—I believe no interruption to the peace of the country would happen. I believe more persons would be pleased than displeased.

In your judgment, is the legislative council, which is to be appointed, and removeable at the pleasure of the governor, and to consist of twenty-three, a right sort of legislature for the province of Canada, either now, or ever?—I apprehend not now: certainly, not for ever.

Have you the same objection to a legislative council appointed, and to be removed, by the King?—Not nearly so strong as against a legislative council removeable by the governor. There is a wonderful difference; the former would not make the counsellors contemptible in the eyes of the people: they would suppose the counsellors would not be wantonly removed. Whereas, if they were removeable by the governor, they would be considered as the mere tools and creatures of the governor, and no reverence would be paid to their acts and ordinances. How far they might meet with obedience, I will not say.

Would that alteration, substituting the crown in the place of the governor, but leaving the council of twenty-three, form a legislature fit to be given to the province of Canada?—I am inclined to believe that they keep in view an assembly, notwithstanding the ill conduct of certain assemblies in North America. But if it be thought that the Popish religion is so great an objection to the constitution of an assembly, partly because it is dangerous to trust Catholics with much power; if it be thought, on the other hand, unjust to exclude them entirely; I have thought a legislative council for a few years, consisting of a certain definite number of Roman Catholics, with a large quorum consisting of Protestants only, might be a tolerable substitute for an assembly for seven years. My reason for saying Protestants only is, because I conceive, if the Popish religion is not a bar to admission into this council, it ought not to be a bar to admission into the assembly. For that occasion, recourse should be had to an assembly; which would be very agreeable to the Canadians, if Catholics were admitted into it.

Are the provisions introduced by the proclamation such as deserve to be called inapplicable to the state of the province?—I think not, in the general extent. They require correction, and

a few alterations. With respect to the laws, I beg leave to state a distinction. The laws that I have mentioned, I can divide into three parts : laws of tenure, laws of conveyancing, laws which I shall call a devolution of property. I conceive the laws of tenure, by which I mean the laws relating to the mutual and reciprocal ties of landlord and tenant, all subsist, notwithstanding the proclamation, and do not need a revocation of it to revive them. These laws of tenure contain the laws that oblige the tenants to pay their quit rent and corn rent and their mutation fines, to their landlord, to grind their corn at his mill, and give him his meal-toll. If these laws were to be altered, it would be taking away the property of the seigneur ; which cannot be done, because it is granted by the capitulation. In the next class, I place the laws of conveyancing, which, though not affecting the very property of the people, because a man may be made to alter the mode of conveying his property, without absolute violation of property, is yet a necessary branch of the law for the convenience of enjoying property. These laws I consider as having been changed precipitately, and that they ought to be restored. In the third class, I place the laws of devolution ; meaning by that the laws of inheritance and dower, and the right of the husband upon the death of the wife : the distribution also of the intestate's effects. Those laws may be changed by the legislature, without a breach of the capitulation.

To effect the alteration which you conceive to be required, would it be necessary to revoke or correct this proclamation ?—Only to correct it, most undoubtedly.

In your judgment, would not a total repeal of this proclamation be found a breach of public faith ?—It appears to me a strong one. I believe it would be felt so.

Among those civil rights under the laws of England which this bill is to abolish, do you not understand the laws of *habeas corpus* to be a part ?—I understand they are. If not, there should be a proviso, that the laws of *habeas corpus* shall continue.

Upon the most diligent inspection, do you apprehend any thing similar will be found among the laws of France ?—I do not recollect any thing similar in any abstract I have perused.

Do you not apprehend that a *lettre de cachet* is among the laws

of France?—I believe there is no written law for that. I believe no *lettre de cachet* ever operates without being signed by the King of France himself. I believe the practice is, to give a number of blank *lettres de cachet* to the several governors, who fill them up with the name of those persons upon whom they are disposed to exercise them. I believe *lettres de cachet* signed by others, by an intendant, for instance, would be illegal by the laws of France.

Would it not be illegal to issue *lettres de cachet* from this country to be executed in that?—I presume it would.

By analogy from the present practice of France, will not this warrant a *lettre de cachet* to be executed there, if any minister thinks it necessary?—I think it would.

Would it be lawful, if this bill should pass, for the King of Great Britain, or any body else, to issue *lettres de cachet* to take up any subject in Canada, or in any part of his dominions?—I do not think it would be lawful to be done by any subject residing in Canada, or, at least, I think it would be very doubtful; and I freely think, if it were done, though not lawful, there would be no remedy against it in the province of Quebec for the persons who suffered by it, the *habeas corpus* being taken away.

Did you ever hear that the extent of country, which is to be given by this bill, was heretofore a part of the province of Canada?—I am ignorant of the bounds of what was anciently called Canada. I have heard that Canada is joined to Louisiana. Where one begins and the other ends I cannot tell.

Do you know any good that can result from this extent of limits?—I think the extent rather pernicious. I think it is needlessly establishing the Popish religion, where there is no necessity for so doing. I should think it better to put the added territory into the province of New York, than into any other. I have heard judges say, that the best way would be to erect two distinct provinces, one bounded by this point, the other by the Ohio. General Amherst has a map, that shews it to be a just division.

Do you think it would be a great crime in the British ministry to advise a *lettre de cachet*?—I meant, there would be no remedy against it in Canada, if it were issued. How far it would be a matter of impeachment I do not know.

Do you think it at all probable that any *lettre de cachet* would be issued?—No; I think it would not. I have a better opinion of all ministers.

Is there no remedy for false imprisonment in Canada?—There is against other subjects; not against the intendant or representative of the King. I apprehend there is a remedy against a private person.

Who is to execute the *lettre de cachet*?—I suppose the governor would direct somebody to execute it, according to the laws of France. The order of the governor would be the warrant. I suppose no action would lie against him for execution, by the French law.

Do you think, according to the constitution of Canada, as it will be by this bill, there will not be any remedy against such person executing this *lettre de cachet*?—I think not.

In what language are the English proceedings entered in the courts of justice?—In the court of King's bench, all in English; but they now and then employ, in certain causes, a couple of English lawyers. They were at liberty to plead in French or English; as was it presumed the judge understood both languages. I remember pleading a cause to the Canadian jury. I was employed in that court at Montreal.

Does not the authority to issue *lettres de cachet* in France arise from the King of France being the sole legislator of France?—I cannot tell. I suppose he claims the sole legislative power.

Then the authority of any writing derives its force from the legislative authority?—Yes.

Does any part of this bill, which gives to the Canadians their laws, customs and usages, give to the King in this country the sole legislative authority any where?—It gives the King very nearly the sole legislative authority. It gives him the power of naming the delegates by whom he will exercise it.

Does that legal authority given to the King extend his power, so as to absorb the power of the other two branches of the legislature?—No. He has no power independent of the two Houses of Parliament.

Nothing by the laws of France but the King's signing constitutes a *lettre de cachet*? No order of the intendant,—no order of the



governor of the province is a sufficient justification for the imprisonment of a subject?—I believe not.

Can any authority, not belonging to the person who delegates it, be exercised?—I cannot pretend to decide. If the governor is sent out with a number of *lettres de cachet*, the parties against whom they are exercised would be without a remedy. I think a proviso against that contingency would be convenient.

In what part of the bill is the authority given to the King to act as complete and uncontrolled sovereign?—It states the authority, though it does not give it: and, the thing being done, it is a lamentable thing to be without a remedy against it.

Can it be legally done?—I am unable to answer what the powers of the King of France are, and how far they can be transferred by analogy by this bill. If a man, to be imprisoned in this manner, is to come before a judge removeable at pleasure, without a jury, the counsel for the Crown might argue probably, that the civil rights of the man were just the same as those of the Canadians before the conquest. It would be inquired, how the Canadians, imprisoned by the intendant, under *lettres de cachet*, got a remedy. To which, I presume, the answer would be, that such Canadians have no remedy. Therefore, the Canadians, at this time, must be without a remedy.

I should be glad to know whether, in any part of the dominions of England, where there is no *habeas corpus*, you do not apprehend the same thing might be done—in Jersey, for instance. The Irish have English laws and *habeas corpus*. [No! no!] I apprehend they have by common law *habeas corpus*? that they can provide a redress?—I think the Irish have been happier than they are. It is a pity they have not a *habeas corpus*.

Do you understand that the King has signified his pleasure that the people shall not pay tithe?—No.

Do you think no signification annihilates the right?—It suspends it until the King's pleasure is declared. Every body thinks he has a right to withhold it.

Did you ever consider the King of France, by granting *lettres de cachet*, acted legislatively?—I never entered deeply into the reason of it.

Is the idea of a *lettre de cachet* being a legislative act, new to you?—I heard of it for the first time two or three hours ago.

Do you conceive there is any authority to check the royal authority in any act of government that bears the King's signature?—I believe not. I have understood the law is looked on as the sovereign power given before-hand, not the instantaneous act of volition.

Have you not always considered the King of France as being *de facto* as uncontrollable in the executive part of his government as in the legislative?—His whole power seems to be so in effect. Assemblies of the state are quite out of use. I presume many of the powers he daily executes could have had no foundation three hundred years ago; but I am ignorant of the history of France.

Do you not conceive the King's executive power is fully sufficient to issue *lettres de cachet*, independently of his legislative power?—These are distinctions in words. He does it every day. No remedy is to be had against it. This is the tragical part of the story.

Have you not heard it as an opinion started, that legislation was necessary to make valid the edicts of the King of France?—Not only started, but agreed to by the defenders of the King of France's power.

Are the bulk of the people of Canada, in their religion, devout or negligent?—In general devout and sincere; yet with many exceptions.

How do you reconcile that opinion with thinking that, upon the death of the present priests, they would have been content if Protestants were received in their room?—It was from a conversation I had with a native. It is an opinion.

Is it your opinion or not, that this would have satisfied them?—I really believe, if it had been done at first, it might have created some immediate inconvenience, but that would have worn out a long time ago. They are a submissive, quiet people. I believe, in many places, if a Protestant minister had been put in upon the vacancy of a priest, a very little pains taken by the Protestant minister would have brought over many to the Protestant religion. It is a mere conjecture; no such experiment has been tried.

Would not some extraordinary indulgence alter them very much?—I cannot say I have seen any thing of it.

Do you know of any persons who wished to change their religion, and were afraid to own it?—I had rather be excused

answering questions relative to particular persons. I apprehend, in general, that if encouragement had been held out to those who were disposed to become Protestants, there would have been a great number of converts. I believe our sending a bishop there has tended very much to check it: it has operated (so Canadian gentlemen express it) as a centre of union. It has made the priests necessarily more strict in the discharge of their duty than they were before, or would have been without it. Had this not been done, it is my opinion the priests themselves would gradually have forsaken first one doctrine, then another, of their own religion.

Upon this encouragement given to Protestantism, was there not an extraordinary zeal manifested in sermons against all doctrines of heresy?—I have heard so.

What do you understand to be the nature of the administration of justice in the time of the French? was it pure or corrupt?—I can describe the courts of justice to the committee: as to the execution, I have not sufficient information. I have been told that the judges were not extremely popular. I have heard of one gentleman who is now alive, and who had been judge at the Three Rivers (he does not live there any longer), that his manner was too haughty.

Do you remember the constitution of the French council?—They were in all fifteen, including three great officers of state: the military governor, the intendant, the minister of finance—with the bishop, if he chose to attend. The other twelve consisted of the most respectable persons. There were three judicatures; one at Quebec, one at Montreal, the other at the Three Rivers. These twelve were a court of justice, and likewise a court of legislature in some degree. The French make a distinction between law and the regulations of police. They will not allow the superior council to be legislative; but in the abstract of the French laws printed, there are regulations which we should call laws. They call them laws of the police. I cannot draw the line; I never could; I never could get them to do it to my satisfaction. These judicatures were likewise courts of appeal. Great tenderness was used. Though the three had a complete power of judicature, yet no man was ever put to death without the confirmation of the sentence by the superior council; such was the regard had to the life of a criminal.

Did this superior court receive any appeals, make any regulations, or do any other kind of public business, without the quorum; and this to consist of the majority of these twelve?—I think there were seven in criminal, and five in civil matters.

Does not custom confirm his Majesty in that revenue he had before the capitulation?—That will depend upon the extent of the words “civil rights.” The words civil rights may be construed to mean rights between King and subject, or between subject and subject. If the latter, it does not include the dues: if the former, it does. The expression is ambiguous. It must be meant between King and subject, as well as between subject and subject. There is no determination of the King’s civil right, but under this clause.

Do you think these people now annexed to the province of Quebec, will be liable to the payment of such dues as the King had before in the province of Canada?—I suppose so.

What would be the situation of the merchants’ property in that country under the French law. How is a debt determined?—Determined by the court without a jury.

If there was any appeal from that decision, where would it go?—According to this bill, there is no provision made about appeals. I suppose it is intended there should be an appeal to the King in council. I do not know.

What appeal was there under the French government?—Under the French government there lay an appeal from the superior to the King of France’s council of state.

In what language do you conceive, by the present bill, the pleadings will be?—I suppose in either; as nothing is said about it—under the words, “civil rights,”—in the French language, probably.

Do you mean to say, that the pleading of the advocates was in either language; or that bringing matters into issue was in either language?—In both cases.

According to the French law, if I understand it right, which is precisely the civil law, there must be complaint and answer, and different pleadings in writing?—There must.

Do you think by the bill that that mode of pleading will be in the French, or the English language?—I should rather incline to think it would be in the French.

Do you not think it necessary and fit, that it should be specified in the bill in which language?—I think it ought to be specified in the bill, for the benefit of the parties, to be in either. It would be a moderate indulgence for a few years after the English language should be introduced. It is in the breast of the parties to choose.

Suppose one party says, I choose to have it in English, and another says, I choose to have it in French; who is to determine?—Hitherto, it has been the custom, I believe, that to the English declaration, a French plea may be made.

How do you think, under the bill, the criminal proceedings would be carried on, in English, or in French?—I presume in the English language. I think this also had better be expressed in the bill.

In the case of a man tried upon a criminal process, is it not of as much consequence, that he should be tried in the language he understands, as in the civil process?—No inconvenience has arisen. There are interpreters.

When they were mixed, did any inconvenience arise?—None of sufficient importance to make it expedient to drop the practice. It is certain, that six Canadians and six English have often been inclined to divide equally, and less inclined to agree in their verdict. The national incongruity increased from the coming of the bishop, and made them more shy than they were before. That has created a kind of distance. They do pretty well, upon the whole.

Do you think that an indefinite council of Canadians, that could be extended or contracted, would be thought a proper means of preserving their liberty?—I cannot say how it would strike me. In tithe, they pay a twenty-sixth: it was so settled in 1663—the thirteenth sheaf to the Crown. They complained to the intendant. At that time it was thought too hard a pressure; upon which the superior council made a temporary or provisional regulation, that they should pay only the half; but in that case, that they should thrash it out for the priest. This was afterwards confirmed by the edict in 1672. It has stood at that rate ever since; notwithstanding the endeavours of the priests to bring it up to the original thirteenth.

Supposing the former law of carrying on the pleadings by wri-

tings established, do you conceive law charges would be cheaper than in trial by jury?—I do not say they would. As to the expense of the law, it is the consequence of the increase of expense of every other article. Canadians have been admitted upon a jury from the very beginning of the colony, and to practice as proctors and advocates. The same persons practice now, who practiced then; but every thing was cheaper then. Justice was, perhaps, too cheap for the good of the people, if possible.

What is the proportion of the trade carried on by the English and Canadians?—My information is only from people there, to which I give full credit. I have been out of the province more than four years. I cannot say any thing from my own knowledge; perhaps, seven-eighths may be the trade of Great Britain—the export trade.

Was the old government well calculated to protect the persons and property of the lower classes of people?—I believe great partiality was exercised in favour of the lower. The upper are the principal part of the discontented.

Does your information lead you to know, that the intendant had the opportunity, or made use of the opportunity, of enriching himself and favourites in a considerable degree?—I have heard stories of that kind.

What redress had the lower class?—A complaint to old France. I know of no other.

When you resided there, were there any reduced half-pay officers of the army or navy?—There were some who purchased lands. No grants were made: they all imagined the English law was to prevail.

Do you know of any complaint against the conduct of the bishop, for exercising an authority violent, cruel, and unjust, against those who did not conform to his way of thinking?—No. I never heard of any such thing. I have heard complaints made by a man against his turning him out of his living.

Mr. Maseres then withdrew.

Mr. Mackworth said, he did not mean, upon his own part, to call any other evidence now; but he should wish to ask general Carleton a few questions.

The House resumed.

*Friday, June 3.*

The order of the day being read for going again into the committee upon the bill, the House resolved itself into the said committee. As soon as the Chairman had taken the chair, General Carleton was called in and further examined.

FURTHER EXAMINATION OF GENERAL CARLETON.

Have you adverted to that part of the bill describing the boundaries which the province of Quebec is to have for the future?—Yes.

What idea have you of carrying government, or the administration of justice, as far as the Ohio?—I have not considered that part sufficiently to say I have formed any particular plan. I thought I should have had time sufficient to think of that matter before I left this country. I think, in general, it would be an advantage, if the officers of justice advanced forward into the interior part of the country. I do not understand that the country as far as the Ohio was ever under the government of Quebec, according to the present limits of the province.

Can you inform the committee whether Détroit and Michigan are under the government?—Détroit is not under the government; Michigan is under it. There was very little inconvenience in governing them; for this reason, there were very few Europeans settled there. There were a great many posts, where officers of discretion were sent to regulate the trade, and manage the government, by presents and great civilities. I do not know the settlement of Détroit very accurately. It has been established for some time. The intendant had delegates up there; but there was very little business. The greatest concern was the management of the savages.

Do you apprehend, if there had been a very considerable number of European settlers, they would have been more difficult to govern?—It would, of course, have required a greater number of officers, and an establishment, and a great expense; otherwise I do not apprehend great difficulties.

Do you apprehend the principal difficulty would have arisen from the great number of officers, and not the distant situation?—If they were as orderly as I found the Canadians, and as I was told they always were, I should think there would be no difficulty.

Do you apprehend it is very likely that other settlers, besides more Canadians, would go to this place, upon proper encouragement?—With proper encouragement, no doubt they would.

Do you apprehend the obedience of those other settlers would have been less than what you expect from the Canadians?—That depends upon such a variety of circumstances, that, unless one knows them precisely, it is difficult to judge upon the matter. They are a lawless people, that have not been accustomed to government.

Do you apprehend that, under the form of government intended to be established by this bill, those additional European settlers, who are supposed likely to come to this place, would be as easily governed as the Canadian settlers were, under the old French government, or under the Canadian law with our government?—I cannot tell. I did not understand that government had any plan of settling this place.

Do you apprehend the throwing so large a tract of country, as between the Ohio and Lake Erie, into the government of Canada, is absolutely necessary for the security of the province of Canada?—I do not apprehend the absolute security of the province depends upon that.

Would that tract of country be easily managed by the legislative council and governor resident in Quebec?—I can tell, from information, that it was very easily governed when under the French government.

Was the country so described considered as part of the province of Louisiana, and not part of the province of Canada?—I always understood it was reckoned, under the French government, as part of the province of Canada. The posts were sent from thence, and relieved from thence. I speak to the best of my memory.

Do you know to what part of the French territories in America those troops retired which evacuated Fort du Quesne, upon the capture of that place?—I really do not know.



What inconvenience arises, in your opinion, from the limits given to Canada in the proclamation?—I had frequent complaints from the Canadians, that the province cut off in that manner, and contracted, deprived them of the greatest part of their property, which was promised to be protected. The English, as well as the Canadians, complained that their property went up to the upper country, and that, if the persons entrusted with this property did not, of their own accord, act honestly, they had no means of procuring justice.

What do you mean by that property? Was it the property of lands granted them by the King of France; or what?—Lands granted them by the King of France, and the profits of the land.

Was any part of this land cultivated and inhabited by Canadians?—I never examined that matter thoroughly. Whether their demands were just or not just, it was without my reach. I know, from very good information so far, that there were, upon the Labrador coast, certain posts established, where they carried on the sedentary fishery and trade with the Indians. I believe very little is cultivated upon that side; nor do I think the country capable of much cultivation.

Is there any land upon the south side of the boundary left out of the proclamation, that was cultivated and inhabited by the Canadians? I mean upon the south-west side?—I rather think there was no great cultivation; but I heard them say, they had been driven away by the war. I saw a few fields, that had been cultivated, up the St. Lawrence river; but very few.

Can you give any account of the number of people at the posts, or elsewhere, that were shut out by the proclamation?—Fourteen or fifteen hundred. I speak at hazard.

Do you look upon the Illinois as part of Old Canada?—I believe so. New Orleans was under the government of Quebec; but where the precise district ends, I really do not know.

If these posts of Détroit and Illinois were now put under the government of Canada, and a line drawn there, would not all that difficulty be removed?—Provided they did not trade beyond the line.

How far do you take the Illinois, which is the bounds of Canada by this bill, to be from Quebec?—I do not know.

If a thousand miles, how is justice to be executed there?—It was executed by the delegates of the intendant, or commander, I understand, of Quebec.

What purpose will it answer to extend this colony to the river Ohio?—One good purpose; that the courts of justice can extend so far, that there may not be an asylum for all the vagabonds to take shelter there.

Might not that be put under some nearer province, and justice, of course, better administered?—I never considered the subject. These are matters that require a great deal of consideration.

In the present shape given to Canada, will not the Indians have reason to think that his Majesty's government takes its rise from the cession of Canada by France?—I believe there are a great many tribes of Indians who think that neither we, nor France, or any European power, have any title to the country; nor do they acknowledge themselves to be their subjects.

Do not those limits run into a part of the Indian country, which they say does not belong to the French or English?—The Indians look upon all their own ground as free. They look upon them as their own hunting grounds.

Do not these limits give them a greater advantage than they had before in carrying on the Indian trade, in preference to any other colonies?—I do not know but it may; but I do not see the extent of it.

Did you never hear of any plan for selling the south and south-west parts of the colonies to prevent the land from becoming derelict, and becoming a retreat for vagabonds?—Only from public talk.

Is there any inconvenience in putting that government under the commander-in-chief for the time being?—I never considered the question.

Does not this bound almost all the considerable colonies on the continent—New England, New York, Pennsylvania, Virginia, and very near the boundary of North Carolina?—Every gentleman can satisfy himself by casting his eye over the map. I have it not so strong in my memory.

Do you understand that by the extent of limits, any exclusive privilege is given of trading to Canada from the other colonies?—I understand not.

Are you not of opinion, that when those posts at Détroit and Illinois are put under civil government, other provinces will trade into the country with greater safety than they do at present?—No doubt they will trade most where justice may be had now.

Do you think that sedentary fishery can be carried on with advantage under the present situation of the Labrador coast annexed to Newfoundland?—The fishery cannot be carried on according to the system of the fishery in Newfoundland, which I understand requires that the fishermen should go away at autumn, and return the next spring. The great sedentary fishery of the Labrador coast is chiefly carried on in December or January, long before they can possibly come upon the coast, or go away. Besides that, there are many arrangements made. People go to great expense in establishing the courts. A great part of the preparations are adapted to the particular spot.

Is not the Labrador fishery the principal fishery?—I always understood it was.

Is it not necessary, that the coast should be kept distinct and apart?—If not preserved apart, and great care is taken to suffer no disturbance of any kind, the seals would take fright, and go away from the nets prepared to take them in. The sea-cow fishery would be disturbed in the same way.

Have you ever heard of regulations concerning the Indian trade, transmitted to the Indian governor by the board of trade, in the year 1766?—I may have seen it, to be sure; but I cannot say I remember it precisely.

Is it necessary for carrying on the Indian trade, that the trade should be within the jurisdiction of some civil government?—It seems to me necessary, at least very convenient, that there should be some power, to keep order and administer justice.

Do you think their limits should likewise be extended, to comprehend it?—It would contribute very much to good order, if the courts of law, or some power, had authority to control, to take up rioters and disorderly people, through the whole extent of the colony; and that there should be no spot or asylum without the reach of law and justice.

Is there not now a law to take them up and send them to be tried within the limits of the nearest government?—Not for fraud, I believe; there is for high crimes and misdemeanours.

Do you think all the advantages would be had with regard to the frauds?—It would be one advantage.

Do you know any great advantage with respect to administering justice?—Small riots—there is no law to send them to the next colony for small riots.

From what authority have you asserted, that the government of Louisiana was under the governor-general of Canada; and what period did you mean to speak to?—The authority is from the reports of all the Canadians in Canada. I speak of the latter time.

Do you recollect any one man of knowledge in the country?—Yes, M. St. L——; and I speak precisely. I have often heard him give an account of judges sent down from the government of Canada, a good deal below the forks of the Ohio.

From what authority did you state the number of inhabitants?—From more than a general guess; from accounts and information I took in 1759, compared with the return in 1769 and 1770.

How did the comparison enable you to judge?—The return I had was the increase of births compared with the deaths.

My reason for asking the question is, because there is a paper of general Murray, that makes it amount to seventy-five thousand souls. This, I think, was in the year 1766?—I know nothing of that. What I said was from the request and desire of the parish priest. Under the French government, every seigneur was obliged to give his account to the governor.

Three hundred and sixty were returned to serve upon juries. Was there any limitation of property in the qualification?—By the return I saw, a good number of disbanded soldiers, who had no other livelihood but selling rum. I do not know there are any more besides them resident. They have diminished since the peace.

Are the Canadians so well acquainted with the principles of English government, as to be competent judges, what would be the best kind of government for their own happiness?—I am pretty sure not. There are very few politicians among them. They take it merely from education.

Did you ever hear of a petition from the inhabitants, desiring they might be permitted to meet in bodies?—Not in my time.

I do not recollect. If they are upon record, they are easily produced.

Was the information respecting the seal fishery from your own knowledge?—From the best information I could pick up. That system of fishery which compelled the people to remove from Newfoundland, could not be applicable to the sedentary fishery.

In your opinion, will it be most for the interest of this country to establish a form of civil government in Canada, by the introduction of the laws to exclude the civil government of England, rather than admit a part at least of the system of the laws of England?—That is a great question. This House is a much better judge.

If the civil law of France is established, must a civil officer like the intendant be again established?—I do not see the necessity of it.

If such an officer is established, will it not be strictly conformable to law?—I am not a judge.

Did not this intendant regulate the price of all grain by his own will and pleasure?—I believe it was indispensably necessary the governor should sign the order with him.

Did it not check the improvement of the country to a great degree?—They were in a state of war at that time. They did cultivate the ground as much as they could; but far short of that they do now. I understand that, for the manufactures of this country, the Canadians' order was two-thirds; the other third was English. I do not pretend to speak accurately.

Do you know of any wheat being exported by Canadian merchants?—You may get English merchants that will tell you much better. I rather think the Canadians sell it at their own risk.

During the French government, where was the fur trade of the Illinois conveyed to?—I cannot tell.

Which is the natural channel of bringing home that trade? Does it come down the Mississippi, or through the river St. Lawrence?—The difficulty of getting up the Mississippi is very great. I am inclined to think a great part went down the great lakes. I speak with doubt.

Do you understand the fur trade about the Illinois was sup-

plied equally with goods from Canada?—I am not able to inform you.

Were you acquainted with the fur trade during the time the French were in possession of that country?—I am not accurate enough to give the House full satisfaction.

Have you not understood, that it was constantly brought to the King's warehouses, and that there a certain price was paid down for these furs?—I believe it was; I cannot speak certainly.

Do you not apprehend that there were many regulations during the time of the French respecting the fur trade, which made a part of the Canadian law respecting that trade?—I believe not.

There are two petitions on the table from Canadian subjects; one in 1773, represents to the King their grievances of the English law introduced among them. Do you know the description of the men who signed it. The noblesse, or a mixture of different classes?—Chiefly of the noblesse, and most creditable persons in trade.

Was there any export of corn during the French government?—I believe it was not forbid. I believe it never happened to be the case.

Did not the prices of grain fluctuate more by not having an exportation?—At that time there was a great scarcity. When that was the case, the price was naturally very high. A great scarcity happened the first year I went there; since that every year mended. They have got too great abundance. A great quantity was exported last year, and the year before.

What is the difference of prices?—I cannot remember. It might be known in the country.

Have you heard what general means the intendant had of enriching himself and his favourites?—I do aver I never heard any complaint of it. When they did speak of it they seemed extremely well satisfied with it.

Will you state the outlines entrusted with the intendant?—So far I can say—the matter alluded to was between the intendant and the King; not between the intendant and the people. The great sources of wealth were from the King.

How were the taxes levied under the French government?—By the King's edict of old France.

Did you never hear any complaints of the delegates of the

intendant?—I cannot say I have. There might have been some.

Are there any regular clergy in Canada; convents, nunneries?—There are.

Do the clergy in Canada employ themselves much in instructing the congregations under their care?—I suppose so.

Are they reckoned an enlightened body of men?—There are of all sorts.

The witness withdrew.

Mr. *Baker*.—In consequence of what has fallen from an honourable gentleman, as to a difference of opinion that has subsisted between general Carleton and general Murray concerning the number of inhabitants, it is necessary general Murray should be ordered to attend.

This order could not be made in the committee.

Governor *Johnstone*.—If the honourable gentleman wants it for that purpose, the papers may be produced.

Mr. *Baker*.—There were a thousand things that passed yesterday, that make it necessary he should attend.

Mr. Hey was then called in.

EXAMINATION OF WILLIAM HEY, ESQ., CHIEF JUSTICE OF  
QUEBEC.(<sup>1</sup>)

How long did you reside at Quebec as chief justice?—Six years; from the beginning of September 1766 to 1773.

Have you found the Canadian inhabitants dissatisfied with the introduction of the English law, and exclusion of their own laws and customs? Do they generally approve of the trial by jury in criminal causes?—I think they do.

Are they not equally capable of deciding in civil as in criminal causes?—I do not think the Canadians are in general called upon juries, so often as other inhabitants of Canada.

Do you conceive they are less capable of distinguishing in causes of property, or manslaughter?—It is nicer to determine

(<sup>1</sup>) In the new Parliament, which met in November 1774, Mr. Hey was returned for Sandwich; but he vacated his seat in 1776, on being appointed a commissioner of the customs; an office which he continued to hold till his death, in 1797.

questions of property, which depend upon cases of law, than criminal causes which depend upon fact. I always found them extremely attentive to my directions ; if I may say so.

Were they not willing to receive the like assistance in civil causes?—I think they were, in general, a very attentive and obedient people.

Are not the laws of Canada respecting lands, dower, and gift by will, allowed by the court and juries at Canada, respecting the Canadian subjects only, to be just as they were when they were in the possession of the French?—I believe the court of King's bench did admit the Canadian laws and customs indiscriminately, in general. The ordinance directed them to do it.

Then you believe the Canadians would be content to have the laws continued to them upon this subject?—I believe they would. They have made objections to juries. The higher part of the Canadians object to the institution itself, as humiliating and degrading. They have no idea of submitting their conduct to a set of men, their inferiors ; and the lower order look upon it (as in truth it is) a burthen to them.

I apprehend the customs of Canada are as much considered by the juries of Canada, as the particular customs are here by the judge and jury?—I believe, in the court of King's bench, they are. I have thought myself obliged, in my capacity of chief justice, in every case of appeal, to determine by the same rule ; because it seemed to me a gross absurdity, that I should sit to determine the merits of a cause, governed by one kind of law, which they had determined under the provisions of another.

Is there any method so likely to reconcile the Canadians, in general, to our government, as the introduction of the English laws, by the intervention of a jury?—There are two questions, rather. I believe they have great objections to the introduction of English laws. With regard to trial by jury, they certainly do not understand the benefits resulting from it as we do ; but I do apprehend, under certain modifications, it would not be disagreeable to them, both in civil and criminal causes. I think the trial by jury would not be disagreeable to them, if they were allowed compensation for their time and trouble ; and I think, further, if that unanimity which our law insists upon, was not to be insisted upon there, and that the jury were to be com-



posed of an unequal number (suppose thirteen or fifteen) and that the majority of two-thirds were to determine the question, I do not, in my own mind, think there would be much objection in the main body of the Canadians.

Do you mean this regulation to be in criminal as well as civil causes?—No. All in criminal causes.

Have you ever understood that the French suitors had ever been accustomed to make presents?—I have never heard of any instance. I have found a great alacrity among the Canadians to canvass for the vote of a judge. That is still remaining in the province.

Have you heard any general complaint of juries deciding partially in causes of property, or by any improper influence?—I cannot recollect any particular instance. Suitors have complained. I never heard any general complaint with regard to decisions. I have heard some with regard to their conduct in not deciding matters.

Why did they hesitate?—Perhaps it might be from difficulties arising from the question itself; perhaps it might be prejudice as to the party, as between one another; but they certainly have departed without giving verdicts; and, I am ashamed to say, I did not punish them for it.

Then the Canadians do not think, under the proclamation, this country is under an indispensable necessity to allow them juries?—I cannot take upon me to say. They have an option. They have not frequently used the option. According to the best of my information, it never has been in the court.

Would not the English be very much dissatisfied if juries were not to determine?—Very much so. They are wonderfully zealous for the trial by jury; and, the misfortune is, they do not act up to it; for I can never get them to attend. They are not numerous. It certainly comes upon them at a very inconvenient time. They have, some part of the year, nothing to do; the rest of the year they are exceedingly busy.

Under the present bill, do you think you could administer justice equally to your own satisfaction, or to the Canadians in general, as you have done hitherto?—The question is rather embarrassing for me to answer. I hope I may answer for the integrity of my own conduct.

Could you make yourself equally master of the Canadian law as of the English law?—That must require a great deal of time and attention; and, I am afraid, more abilities than I am master of. If his Majesty thinks proper to continue me, I shall certainly try to make myself master of it. I am unequal to give any opinion upon this bill. It is not my province, before this House. I profess myself perfectly indifferent to the bill, and very unable to form an opinion.

If the benefits of the *habeas corpus* were explained to the Canadians, would they not think themselves highly favoured by it?—I should think it impossible but they must think themselves highly favoured by it; but I do not pretend to answer for the opinions of the Canadians. They are, in general, a very ignorant people—a very prejudiced people.

Are they not capable of understanding the benefits of juries, as well as those of the *habeas corpus*?—I cannot answer for their capacity. They are, at present, in a state of great ignorance with respect to it.

If the *habeas corpus* is not allowed, is not arbitrary imprisonment in the power of the governor, without legal relief?—I should apprehend there are abundance of restraints upon the governor, which will intimidate him; and that the courts of justice would relieve against such. It would not be so instantaneous, perhaps, as the case might require.

What is the mode of relief that the courts would take, if it came to their knowledge, under the establishment of this bill?—They would not give instant relief; but I apprehend the party would be delivered at the commission of oyer and gaol delivery. If out of term time, not.

Suppose the imprisonment private, what remedy then?—No remedy.

Without the permission of juries, may not money be levied upon any of the King's subjects, under this bill?—I have had but one view of the bill. I did not know of my attendance here. It does not occur to me, the power of raising money—it is so directly in the face of every law. I apprehend it might not be done readily. The application must depend upon the decision of the court; consequently, upon a jury.

If the Papists were relieved from the oath of transubstantiation, would they not take the other?—The clergy would not. Perhaps some of the other inhabitants would. The clergy might admit the King's supremacy with regard to temporals. I speak only my own opinion. There is no such thing as public chapels. Debts have been sued for goods supplied to the Canadians.

Have the Canadians thought the decision fair?—I never heard any particular objection to them. I believe the import and export have increased.

What proportion is carried on by the English subjects residing there?—The English subjects import more than the Canadians; but when imported, the Canadians take it up from them to the country.

Have the profits of the possessions of the Canadians been increased since the conquest?—They certainly grow more corn, are more populous, and likewise cultivate their land better. If this land had been now sold, no doubt it would have sold for more. The body of the people are not at all dissatisfied with the conquest. To be sure the higher part are.

Have juries been considered as judges of law as well as fact?—They have taken it upon themselves to judge of law as well as fact. They have laid it down as a certain principle, that they will never give a special verdict upon any occasion.

Have you not paid attention to the Canadian law?—I certainly have, whenever causes came up to the court of King's bench. Very few causes ever originated in my own court.

Do you understand that, by this bill, all the law in civil causes is to be repealed, and the law of Canada take place entirely?—I understand it so.

What remedy is substituted in the place of the *habeas corpus*?—I know of none. There is no long oppression; they sit every week.

Under the present constitution of the English criminal law and the French civil law, could a person, not imprisoned for a crime by the operations of law, have relief by the gaol delivery under this present bill?—My duty is to inquire into all prisoners, and to know for what they were confined. If I did not find a law for it, I should be tempted to make one myself.

Would the French civil law give any reparation to the party for such confinement?—I should apprehend it would, upon the common principle of justice.

Is there any positive law in the Canadian code, that authorizes that idea, or is it what your humanity would make you infer?—I apprehend, under every system of laws, there must be naturally a redress for an injury of that kind. What the particular mode of it is under the Canadian law, I cannot tell.

Do you mean, that any chief justice, or judge, would be entitled to assess any particular sum of money to compensate?—Undoubtedly, the court must sit and determine the quantity. I cannot speak to it. I never studied the law of Canada as a system. I have endeavoured, in all cases of information, to collect the law. I apprehend the aggrieved party must bring an action; and that, according to the evidence of the debt, the court would allow it him. I believe, where the matter has been doubtful, and has depended upon an intricate account, the court has *ex officio* awarded it to arbitrators to settle it. I mean under the old Canadian system,

Under the Canadian law, do you know of any power of imprisonment for debt?—In particular cases there was a power; but, in general, they did not use the arrest for debt. For debts of a large nature, such as bills of exchange, I believe they did allow it; but, in general, not.

Do you conceive the recovery of the property of the English merchants, though in Canada, would be more or less easy, under this bill, than it was before?—That will depend, in a great measure, upon the establishment of the courts for the administration of justice. If they were well supplied with proper powers—persons of discernment and integrity invested with proper powers—I should apprehend that property might be more easily recovered.

What do you understand, under the present form of the bill, would be the mode of administering justice in that country? Who would stand in the place of the Canadian intendant?—I apprehend that would depend upon the execution of the authority which is given to the Crown, by virtue of that clause, which enables the King to appoint courts of justice.

Do you apprehend the matter of courts of justice to be left at

large?—I do. I apprehend my present commission will be at an end.

What kind of a commission can be given under the Canadian law?—I see no necessity for altering the commissions.

Will the establishment absolutely and unlimitedly of Canadian civil law, tend to encourage or discourage British subjects from purchasing land in that country?—I believe the British subjects would have no objection to the restitution of a part of the Canadian laws; but I think the restitution of the whole would very much disincline them to settle among the Canadians.

Do you think it would be impracticable, or even very difficult, to draw such a line of admission of Canadian laws, as would give satisfaction both to the new and old subjects?—I myself have been unfortunate enough to differ with general Carleton in that respect. His Majesty was pleased to order the governor, the attorney-general, and myself, to make our report upon the state of the province, and particularly with regard to grievances which the Canadians either felt, or thought they felt, under the administration of justice, as it was then administered; together with the remedies that we thought most proper to be applied to those grievances. The Canadians conceived that the introduction of the English laws, and the exclusion of their own, at least their doubt and uncertainty how far that matter went, was their greatest grievance; and the remedy proposed to be applied was the restoration of their own laws and customs *in toto*. I own, myself, I thought that went too far. I thought that such a mixture might be made, as would be agreeable both to the Canadians and British subjects, at least the reasonable part of both, and answer every purpose of state policy here at home. My idea was, that a country conquered from France, and retained by the treaty at the end of the war was, if possible, to be made a British province. I was, and still am, very sensible, that must be a work of time and difficulty; but, however, I thought it an object worth attending to. The first thing that suggested itself to me under that idea was, that the laws of this country should be considered as the leading system of judicature in a province that was to become British. I was willing, however, to allow large exceptions in favour of the prejudices, the very natural and reasonable prejudices, of the Canadians. I was willing to allow

them the whole law with respect to their tenures, with respect to the alienation, descent, and mode of conveying or incumbering their real property, to the rights of dower and marriage, and the disposition of their personal estate in case of intestacy. This I thought was a very large field for them: quieting and securing their possessions according to their own notions of property, and not breaking in upon or disturbing their former settlements. The rest of the law, as the law respecting contracts, debts, disputes of a commercial nature, the law of evidence, and many other matters of that kind, I thought might safely stand upon English bottom. These, with the whole criminal law of England, with the trial by jury, the presentments by the grand inquest, together with the establishment, or at least, toleration of their religion, with some reformation in the proceedings of the courts of justice, to exclude our modes of pleading, which the legal pleaders of the province are very unequal to, and to introduce a more compendious and simple method of process, more conformable to what they had been used to under their own government, would, I had hoped, have made up a system that should not reasonably have been objected to by either British or Canadians. I am of opinion, that at the time I stated that as the ground of my difference from general Carleton's report, it would have been satisfactory to the Canadians. I am in doubt now whether it will; but I still think it ought.

Why do you think it would not now be satisfactory to the Canadians?—I apprehend they have risen in their demands of late, and hope to be gratified to the utmost extent of their desires.

Upon what are these very extensive opinions founded?—I know of no particular ground for the extent of them. It appears to be a natural progressive state from the condition they were in, to that in which they now stand. They were terrified, and in a state almost of distraction. They neither expected to retain their religion or their laws, and looked upon themselves as a ruined and abandoned people; but when they saw attention wisely and humanely paid to their situation, they were willing to improve their condition, as far as their ideas carried them, to the absolute restitution of their whole laws and customs. But I know of no particular encouragement given them to ask any thing.

It was, I have no doubt, promised them, that their case should be fully and fairly represented, and that they might rely upon his Majesty's bounty and goodness for their relief.

Do you suppose they included in that general wish for the restitution of their laws and customs, a wish for the restitution of the French criminal law?—I do not apprehend they did. They seem perfectly satisfied with the English criminal law. I cannot conceive them so stupid as to wish for the French law. I speak of the great body of the people. There may be a few persons of a very peculiar nature, that may wish for it.

Do not those persons you so properly describe as looking upon their situation with respect to their property and with regard to juries, desire the restitution of their criminal laws?—I have no doubt they do. These are the noblesse.

Does not the objection of the higher people to the trial by jury, in civil causes, in a great measure arise from their being deprived of that influence they used to have from their power over the judges?—I cannot say it does. I never heard any complaints of their exercising any undue influence over the judges.

Do you conceive that their readiness to have back the French laws did not arise from the expectation of success? Have you not heard that the more powerful were the most successful than the lower people?—I never have heard any thing particular one way or the other: but one would be apt to imagine that such an influence might prevail. I am inclined to think, in general, that their courts of justice were pure, and justice fairly administered. There was a great control of the superior council over every judge's determination. As that council was composed of men of the first rank and character in the province, I cannot suppose they were under any undue influence, or that they would suffer any.

Would not the lower and middle Canadians be flattered and pleased by the power given by a jury, in proportion as the higher were mortified?—I am inclined to think not. They would endure it, that is all: and, under the alterations I have mentioned before, it would be less disagreeable to them; but I fear it would take a long time to convince them of the use or advantage of it.

Was an appeal to the superior council attended with no difficulty or expense?—No difficulty, and very little expense.

Where will the right of hearing appeals be lodged under this law?—I apprehend that will depend upon the constitution of the courts; as they will, and must be new modelled under that law.

Do you think the former law of appeals will be inapplicable to the government of that country under its new law, without a special provision being made?—There will be no court to appeal to. The present courts will be abolished; the present judges will be abolished. The authority that constitutes these courts may, I presume, constitute the mode of proceeding in them, and how and where to appeal from them. But this act only directs, in my apprehension, that the rules of law to be observed in these courts should be those of Canada, with regard to civil property.

Can you suggest any body sufficiently qualified in the laws of Canada, to receive the appeal and do justice upon that appeal?—I have no particular person in my eye to mention.

Do you understand the appeal would be according to the spirit of the French law?—The ultimate appeal would always rest upon the King and council; but the stages it would go through must depend upon the constitution of the courts.

Do you conceive there would be no inconvenience arise to persons from having their property tried upon an appeal under such laws?—I cannot give an opinion upon the competency of the privy council.

Not with regard to the abilities of the privy council. But do you conceive that the education of a man for a privy councillor in this country, will enable him to judge of the extent of these Canadian laws. Is the Canadian system of laws a short system, or is it contained in many books?—It is much less complicated than the English, and contained in a much less number of books. The text of the Canadian law is contained in a very few articles; but the commentaries may be very voluminous.

Are there not many parts of the Canadian law immaterial to this point, but which might be attended with considerable inconvenience to the English subjects residing there?—I must confess I am not able to answer that question. The Canadian laws were extracted—those that were thought necessary and applicable to every purpose of securing their property—by a set of gentle-



men in Canada ; who, I believe, were very unequal to the work. The compilation is published, and has been printed : it is generally thought to be a faithful one.

In adopting that compilation, and establishing trial by jury in civil causes, might not such trial be obtained without any burthensome expense to the inhabitants ?—I do apprehend it might, if the courts of justice would regulate the fees.

Would it not be difficult, in some cases, for the courts to regulate the expenses ?—I should think not, in material matters ; but in the fees of counsel, for example, no court can, or perhaps ought, to interfere.

Do you conceive that, at present, the Canadians are much attached to France, and would wish to be under that government again ?—I do not apprehend that the body of them would. No doubt the noblesse and the military have been great sufferers, from the loss of their employments and commissions ; and it is natural enough to suppose that they would incline to their old employments, under their own government. But I should hope that they, if proper indulgence were paid to them, might be made to withdraw from every idea of returning to their old government, and become good British subjects.

Do you conceive the Canadians would have any great objection to a provincial assembly, into which Roman Catholics would be admitted, under certain restrictions, such as taking the oaths ?—I believe they have no idea of advantage from it. They look upon the house of assembly as a house of riot, calculated for nothing but to disturb the government, and obstruct public servants.

Do they understand that there is a resemblance between the house of assembly and the House of Commons in this country ?—They do not understand the principles of either.

Have there not been conferences in that country, relative to the form of government, and arrangement of laws, that may best suit them ?—I know of no particular conferences in that country relative to a form of government and arrangement of laws.

Has it never been agitated with them, what would make them happy ?—I know of no conference among them upon that subject. Their ideas are a perfect submission to the Crown, and to any authority the Crown chooses to erect. They have a high confidence in his Majesty. If he chooses to call a house of assembly,

I have no doubt they will compose it; but they would not know what to do when they came there, nor have they any idea of the advantages of such an assembly.

They never, then, have been made to understand, by any of the King's servants, that it would be of advantage to them? No pains have been taken to tell them that, by means of an assembly, they would have a power of internal regulation; but they have been taught to put the amplest confidence in the Crown?—They require no instruction; it is their natural habit. I have harangued the juries upon the advantages of the British constitution; but, whether it was my fault in not delivering my ideas upon the subject clearly, or that they were not interpreted to them in the French language, I do not believe any Canadian took notice of what I said. I mean, my ideas with regard to trial by jury and the criminal law of England. I never mentioned any advantage of an assembly.

Have you ever understood that there was an absolute dislike to assemblies among the Canadians, or only a dislike in part?—They do not understand them; and what they do not understand, they cannot be said to dislike.

Were they ever informed that assemblies could be managed so as to be extremely obsequious to government?—They do not at all understand the method of making themselves so. To the English merchants, who are desirous of establishing the English laws, it would, of course, be an encouragement.

The witness withdrew.

#### EXAMINATION OF M. LOTBINIÈRE.<sup>(1)</sup>

M. Lotbinière was then examined by Mr. Thomas Townshend, jun. The questions were read to him in English, and then in French. He informed the committee, that he was a native of Canada, and of the corps of noblesse; that he has read the bill, and has paid attention to that part which contains the institution of the legislative council, and that he would state his opinion upon that institution.

*Sir Thomas Frankland.*—Parlez un peu plus haut, s'il vous plait.

<sup>(1)</sup> Mr. Maseres describes M. Lotbinière as being a very sensible and reflecting man, and a great proprietor of land in Canada.

That he has been informed, that such an institution would be proposed; that he is, in his own opinion, much against it; that the natural inclinations of the Canadians would be to be governed by a legislature like that in this country, provided they were allowed to be a part of it themselves. That if they had not expressed any desire for a legislative assembly, it was from having been informed, that, in that assembly, they would not be allowed as Roman Catholics, to sit. That he has apprehended one thing may have deterred them: they may have been persuaded, that in case they had an assembly, they would have to pay the expenses of the government; and in its actual situation, the province is not rich enough. That he does not speak positively of their present thoughts, but that this was their opinion when he was there. That this mixed assembly would please them, provided they had not been under the idea, that the expense would fall upon themselves. That he understands the persons who are possessors of land are, in every country, thought the proper persons to compose an assembly, and the project he had seen was upon this idea; and that it was upon this idea that he was for an assembly. That he is of opinion, that an assembly is calculated for that country; nor should he object, if trading persons, or if an inferior order, were admitted into such assembly. That in the plan of assembly he refers to, there seems to be no distinction between those persons who had their noblesse, and those who held the other sort of land. He thinks, if there was an equal balance of power, the noblesse could not reasonably oppose it.

Did you ever hear any material objections to the establishment of a legislative council?—I never heard it particularly debated, nor any objections.

Do you think the Canadians are not desirous of a more free government, than a governor with a council, the members of which are appointed, removed, and suspended by him?—They would certainly desire a freer government.

Would the people approve of the legislative council, if composed of persons interested in the province?—If there were some of the noblesse admitted into the council, the best effect would result from it.

Under the present plan, do you not think such a council a despotism?—I consider it in no other light. I believe they would

wish to choose their own council, and not leave it in the hands of the Crown.

Do you not think the English laws the best for the Canadians in general?—I make no doubt but your laws are wise and good, and make you a happy people, but my countrymen prefer their old laws and customs.

The witness withdrew, and Dr. Marriott was called in.

EXAMINATION OF DR. MARRIOTT,<sup>(1)</sup> THE KING'S ADVOCATE-GENERAL.

Mr. *Mackworth*.—I desire to know what, in your opinion, would be the best establishment of laws in the province of Quebec?—It is difficult to say, upon any subject in this world, what is best for any men or set of men on speculation: that which succeeds best in public and private life is best; and therefore I cannot tell what will be best for the Canadians.

Do you think that the Canadians would choose the system of English law, or the French law?—I do not know a single Canadian. I never was in Canada.

Do you think that the commerce of this country and of the province would be hurt by a revival of the French laws, in cases of property?—I cannot tell.

Do you know anything of the state of Canada?—What I know is from such papers as have been laid before me, by order of the King in council, and by information of other persons.

Captain *Phipps*.—Do you understand the French law?—I find it very difficult to understand any law.

Do you know the power of the French King under the constitution of the French laws?—I do not well understand the constitution of France. I never was in France. It is a very hard thing for a foreigner to obtain an adequate idea of the constitution of another country. The constitution of one's own requires a great deal of close application and study. I wish I understood it better; and that many other people would study it more, and understand it better than I fear they do.

(<sup>1</sup>) This eminent civilian was appointed the King's advocate-general in 1764, and judge of the admiralty court in 1778. He twice represented the borough of Sudbury in parliament, and died in 1803. The answers, in the above examination, are understood to have been revised by himself.

Do you understand the constitution of Ireland?—No; I never was in Ireland.

Mr. *Dempster*.—Do you think it expedient to give the province of Quebec any part of the French constitution?—The question is upon the word ‘expedient.’

I mean, will it be wise and prudent?—By the words ‘expedient, wise, and prudent,’ I understand the question to mean, whether it will be politically wise and prudent. Expediency is ministerial language. It is a word of state: state expediency. It means that high policy, that great arcanum, the sublime of government, extended almost beyond the reach of human wisdom. Few can pry into this sort of knowledge: fewer can comprehend it. I am sure I do not.

By the nature of your office, and greatly informed as you are from your connections with government and your own reading, you must know much concerning the actual state of the province of Quebec. I desire you will answer, what sort of government you would give to it?—The giving laws to mankind is the perfection of all knowledge, human and divine. It is not the work of days, of months, of years, but of ages. For me to answer the question, what sort of government I would give to the province, I must be the vainest of men.

From such papers and informations as have been laid before you for your consideration, I desire to know, in general, what is your idea of a civil establishment for the province of Quebec? what is the properest to be given it by the legislature of this country?—It depends upon a most extensive knowledge, infinite indeed, of the relations of men and things, times and circumstances; the positions of both countries; the manners and genius of the people; the wants of the province; the views of the mother country; the conduct of the neighbouring colonies; the state of the nation *vis à vis*, or respecting them and the designs of the rest of Europe. These relations change every moment: this vast political prospect is for ever doubtful and floating; it contains too many objects for my short vision and poor comprehension. My answer therefore to the question, What is the properest establishment for the province of Quebec, to be given by the legislature of this country is—I cannot tell.

Mr. *William Burke*.—There is an absurdity in this answer.

The gentleman spoke of an infinite knowledge of men and things, times and circumstances, and yet he says, he cannot tell.

*House.*—Read the minutes.

The Clerk read the minutes; as Mr. Burke had represented them.

Dr. *Marriott*.—They were not my words—"it depends upon a most extensive knowledge," &c. &c., that is, the question depends—the words 'it depends' were left out.—Repeats as above.

Mr. *Baker*.—I would ask you if you have ever read anything of the laws of France? I believe you have read a great deal?—I have read a little of the French law.

Do you understand it?—Not the style of it, nor its forms, very well.

What do you mean by the style of it?—There is in every civilized country, in which a system of civil laws is established, a law-language—as there are in every art and science words and phrases peculiar to them, only understood by the persons who practise those arts and sciences. I correct myself: not always understood perfectly even by them, for they frequently dispute about their force and meaning. The law, therefore, calls these arts crafts and mysteries. The French have a serious word for the style of law; they call it 'jargon;' we ludicrously call it 'jargon.' It is a cant word.

Did you ever see any system of the French law in Canada?—I have read a collection of French laws, which contains, by way of abstract, the laws and usages of that province, founded on the laws of the *Prévôte* of Paris; and it also contains several ordinances of police and *arrêts* of the French King.

Do you understand them?—Some part of them: the law-language is difficult.

Is there not, in that collection, something concerning the *jus retractus*?—I suppose the gentleman who puts the question means the *retrait lignager*. It is the right which the lord of a fief or manor, and first original possessor of a grant from the Crown, has to receive some indemnifications from those persons who are called the *arrière tenants*, who hold under him. There is such a title as *retrait lignager*.

If the French civil laws were revived, or suffered to remain in Canada, would it not be a discouragement to the old British sub-

jects to go and trade there, and make purchases of lands ?—If old British subjects were to go thither, the French civil law remaining in force, or being revived, they would go thither at their option and of their own free-will, as they now go to Jersey or Guernsey, where the French laws prevail. Or, for another instance, if you please ; if any person on speculation thought of going to buy an estate in Scotland, if he found that he did not like the Scotch law and inhabitants, he might do a better thing, keep his money in his pocket and stay at home ; a thing much wanted in this country.

Mr. Dempster.—On what terms do you think, in the state of things in Canada, an English merchant going to settle there would hold any lands which he should purchase ?—On the same terms as the Canadians held them who convey the lands ; or if the new settler takes them by grant from the Crown, he will then take them on the same terms as any other grantee would do ; that is to say, on such terms as the grantee shall please. All is voluntary on the part of the purchaser or grantee : he may take the lands, or he may leave them.

Have you given no opinion on the subject of Canada ?—I have.

In what capacity, and to whom ?—As his Majesty's advocate-general, to his Majesty in council. I drew up a plan of a code of laws.<sup>(1)</sup>

Will you be pleased to give the House some account of the plan ?—I had the honour of his Majesty's commands in council, together with my brethren in office, the attorney and solicitor-general, to consider a great number of papers referred to us, and to call for such persons as could give me information upon the subject ; and also to prepare a plan of civil and criminal law for that province. It was referred separately to us three, as being the law officers of the Crown. I drew up my plan accordingly.

What was the plan ?—I drew up my plan in the following method : after stating the principles of legislation, and representing what appeared to me to have been the late condition, and now to be, and likely to be hereafter, the state of the colony, I formed my plan under four heads : the courts of judicature ; the common law of the province ; the revenue ; the religion.

<sup>(1)</sup> Dr. Marriott's work was printed early in 1774, and was entitled, "Plan of a Code of Laws for the Province of Quebec, reported by the Advocate-General."

To whom did you deliver that plan?—To his Majesty in council.

As, doubtless, it was very extensive in point of knowledge and information, the House would be glad to know its contents?—I stand here as his Majesty's servant: my colleagues next to me in office, who have given their opinions as well as myself to his Majesty, are within the bar. When an advocate or counsellor gives his opinion, it is the property of his client. His Majesty is in possession of my opinion. If this House does me the high honour of being desirous to know my sentiments, such as they are (and they are very free ones), the House will then address his Majesty to lay my opinion before the House. If the House will not agree to that address, my sentiments must remain deposited with his Majesty, in his great wisdom, where they now most happily rest.

When somebody moved to have all the papers laid before the House, the motion was overruled, on the ground that we might have complete information at the bar. I fear we shall not have it where we wish it, and were bidden to expect it.

What is the sum and conclusion of that opinion?—In a question so extensive, and which involved every possible consideration of policy, and very little of law, I drew up my opinion, with all that modesty and diffidence which became me. The danger of positiveness in speculative opinions is obvious to any man of a right mind. The more I viewed the subject on every side, the more difficulties occurred to me. I weighed all facts and reasonings in a true balance, without bias to any man or any party, but found it hard, after the whole result of my enquiries, to fix decidedly what the system of law ought to be for a people so remote from home, and of whose manners and wants we know so little. My method of proceeding was this—I collected all facts as represented to me, and as far as other persons, who well knew the colony by having been in it, were agreed in their reports made to the King's government. I then brought all the facts and probable reasonings together in one general point of view, for the assistance of my two colleagues in office, that they might form an easier decision. I drew, indeed, my own conclusions; but they were not positive, but open to better reasonings. I therefore, through the whole, adopted the style and manner of that which Cicero calls the *deliberativum genus dicendi*. I submitted every



thing to his Majesty's wisdom in council, aided by the opinions and arguments of much higher authority than any which I could offer.

Can you recollect any parts of the opinion which you gave?—I answered before, that doubtless if this House will address his Majesty, they will have the whole of it before them. I have no objection, I am sure, for my part; but my memory will not serve me to repeat so extensive a work.

Does it agree in substance, or part, with the bill now depending before this House?—I know nothing of such a bill officially. A printed paper, with a title of a bill relative to the government of Quebec, was put into my hands only two days ago, by a friend accidentally. Not having the honour to be a member of this House, I cannot, according to the rules of it, take notice of anything proposed within its walls. If the House were pleased to refer the bill to me, I should desire to take it home, to read it with great care and deliberation: and if I were within the bar, as I am now without, I would give my opinion upon the bill in my place as freely, and with as much courage, as any man upon this ground.

You own that you have had much information: I wish you would tell us what?—The same as the House has already heard just now, and from some of the same persons.

Mr. *Cavendish*.—If we cannot have the whole of your opinion, will you give us some of the very learned quotations in your book?—So many compliments would naturally draw a positive answer from any person capable of feeling the flattery and giving an answer; but I do not know what the honourable gentleman thinks of me. It is not a little memory or a little time will serve to repeat all the quotations of civil and common law, and all the French and Latin extracts which I have used. I have used a great many in dressing out my own thoughts. Quotations are commonly among authors but the mere ornaments, the fringe and trappings of a book. They only show that the man who uses them has read a great deal; but they do not prove how much he has thought, and whether well or ill; and they show he has thought like other people who have thought and wrote before him. If I could possibly recollect and repeat this mass of the opinions and informations of other men, I must be very

tedious, and appear very pedantic to the House. I question much whether a walking library would be tolerable in these walls. I cannot remember the quotations.

Mr. *W. Burke*. — Will you tell us how long you were composing your plan — it must have required great labour and study — and how many pages it contained? — About three hundred pages closely written.

What was the time it took up to compose it? — I cannot exactly tell.

Was it several months? — Ten or twelve months, at different intervals, to compose it; but if I am to speak to all the time that I was thinking upon the subject, the time was near two years. I took it up, laid it in my desk; took it up, and laid it in my desk again, that it might ripen in my mind. I saw my difficulties of coming to a decision increased. I dreaded being hasty or positive, and I thought no trouble too much on such a public subject, which appeared too much for the life of any man, and most certainly for any one man's understanding.

I desire to know, what was the name of the thing which you took up and laid down so often, and which you delivered in at last to his Majesty? — I think, Mr. Chairman, I remember the face of that gentleman who asks me the question, "what is that thing which I took up and laid down so often, and delivered in to his Majesty?" I answer, when that gentleman was himself in office, he very well knew what sort of things are the opinions of crown lawyers.

Cries of withdraw! withdraw!

Mr. *William Burke*. — The witness at the bar has behaved without any respect to the House. It was enough for the House to be insulted elsewhere. We are in an abject state. I say so, and others think so. We are very ill-used. The other House have used us ill. They shut us out, not for fear we should hear what they did, but for fear we should see they did nothing. In a noble lord <sup>(1)</sup> I am glad to find the origin of these ill-manners, and this gross contempt.

(1) During the proceedings in the House of Lords on the three bills for the government of America, the members of the House of Commons, on the motion of Lord Marchmont, had been refused the usual admission behind the throne.

They frame the bill there, delay it by keeping it in their hands, then send it down to us; and now we are to hurry through it without sufficient information, and nobody will own it. The doors are shut upon us; nobody will give us information. The gentleman says, he does not know the constitution of France—he does not know the constitution of Ireland—he never was in Canada—the King is his client—he will not tell you what advice he has given the King. We have a right to be informed by him. The minister told us we should be so; and now, truly, the witness will not give an answer to any thing, what his real opinion is. By the rules of this House, no witness at the bar is to answer any thing personally touching a member. It is a disrespect to the House. The questions are to be put to the Chair by a member, and the Chair, which represents the House, is to put the questions to a witness. He is to return answers to the Chair, that is, to the House. If an improper question is put, the House may overrule it. I know the good nature of the learned gentleman at the bar. He has taken fire at my expression; I meant no incivility. He would not tell us what it was he had delivered: he, himself, therefore forced me to call it “that thing which he delivered.” I had no other way to express it. I am ready every where to demand or give satisfaction, where there is an affront offered or received. I desire the gentleman may withdraw, and to know the sense of the House, whether I put an improper question, or the gentleman made an improper answer.

Dr. Marriott was ordered to withdraw.

Mr. *Pulteney*.—It is very irregular for a witness at the bar to answer any thing personally relating to the member who puts the question. It was always, in my opinion, wrong, considering that gentleman's situation, to call him to be examined; but we were refused the perusal of his opinion, and the papers. The attorney and solicitor-general here refused to tell us what were the opinions which were given in by them. I have often observed much confusion occasioned in the House, when a witness of wit and abilities

is examined. It should be remembered by the one who puts the question, and the other who gives the answer, that the question is put by the House, and the answer is returned to the House. An attention to this would preserve reciprocal decorum.

*Captain Phipps.*—This examination is getting into a train which appears to me to be very improper. Sir, when men of great parts and much wit come to this bar, I cannot help condemning that kind of applause which is given them, for the exertion of that wit, though very unseasonable. I am sure the committee sees, by this time, that if we proceed thus, the witness will have been called to the bar to very little purpose. Besides, there is a conduct in witnesses not at all consistent with the dignity of this House. I, therefore, hope that the witness at the bar, as well as any others that may come hereafter, will recollect, that although the House owes much to the situation of a witness, the witness owes something to the dignity of the House.

*Lord North.*—I rise to answer the honourable gentleman who was so warm. He is angry that the judge-advocate will not tell you what his opinion was. He gave a complete answer to his question. He said it was a deliberate opinion. I admit that the answer of a witness should not be personal to the member questioning, however rude or absurd the question may appear to him; but the rank and station of the gentleman at the bar ought to be considered. The word “thing” is understood generally as a word of contempt. Such a word might naturally strike him. He is under the protection of the House, and no improper question ought to be asked him.

*Mr. Edmund Burke.*—I rise to apologize for my honourable kinsman next me. I am perfectly sure he did not mean to offend the learned gentleman at the bar. I know that gentleman extremely well, his great abilities, learning, and character. He has distinguished himself by his writings and behaviour, and nobody here or any where else can treat him with contempt; but we should have been very glad to

have had his information. I am sensible that he is in a very trying situation. His information is withheld. It is a distress upon him, and an insult upon us, to refer us to him, when it was known beforehand that it was not likely that he should think himself at liberty to give us his opinion *vivá voce*, after what he has written was refused us by others. It was, however, very natural for us to call for him. We had no other hope of obtaining any information of great authority. All the world knows that the King's advocate-general, and the attorney and solicitor-general, from the nature of their high offices, have the power of obtaining every sort of information. All is open to them in every department of government. They can enter behind the veil. The *sanctum sanctorum* of state must be frequently and confidentially submitted to their view; but the curtain is drawn upon us, and the door is shut. How, then, I ask, are we to get information? Shall we have it from the other Crown lawyers? The answer is, they stand upon their own ground, and take and narrow it when and where they please, as members within the bar; and the gentleman who precedes in office, but who stands without the bar, necessarily suffers from a variety of torturing questions put to him on speculative points, which, though very proper to be asked, may be very embarrassing to the witness to answer. But the question my honourable relation put was a very proper question; the answer was very improper. I do not, perhaps, blame him; but this I must say, that there was not any want of civility to the gentleman at the bar. Never was a man less guilty of it than my honourable kinsman. I never should have concurred in the motion to examine the learned gentleman, if the motion for the address for papers in general had not been overruled.

Dr. Marriott was again called in.

*Chairman.*—You will please to address yourself to the Chair, and receive the question from the Chair.

*Mr. William Burke.*—What name am I to give to the paper which you delivered to the King?—A report.

Mr. *Mackworth*.—I wish you to give a short account of the substance of that report, as concise as you please to make it?—I thought I had before given an account of the contents, as well as of the plan. It is impossible to give a short account of a long affair.

In that report, do you approve of juries? Do you like them? What do you think of them?—I should choose to be tried by them, but I think of juries as I do of every thing else in this world; every thing is imperfect. I have often considered the different modes of trial in different countries; the civil law courts, the courts of common law, and chancery; their modes are all defective in discovering truth. Juries are like most men and things; they have their excellent qualities, and they have their bad ones.

Do you think it will be a hardship upon the Canadians not to have juries? Not to have their lives and properties tried by a jury out of their own neighbourhood? Would it be their happiness or unhappiness?—If I were a Canadian I could tell what would make me happy: if I were to go to Canada I could tell the same. As an Englishman, I say that juries are a mode of trial which I like; they are very favourable to the property of the subject, and the natural liberties of mankind.

Mr. *Dempster*.—Do you think that the present bill is calculated to give as much freedom to Canada as it is expedient to give?—Expedient to give them! I answered before to that question; it involves a thousand others.

Mr. *Jenkinson*.—Do you think that the Canadians will not suffer greatly if the *habeas corpus* law is not introduced among them?—I desire the question may be repeated; the merit of the *habeas corpus* law is a great constitutional question. [Question repeated.]—The idea of the suffering is the idea of the sufferer, and not of a third person; I cannot answer for the feelings of the Canadians.

Cannot you conceive the pain of another person?—No person has a true impression of the degree of pain or pleasure of another being; there is no complete medium to convey the sensations; words will not do it. No person can tell what a man of probity and reflection, who wishes to judge without error, and to do his public duty in an arduous question feels, when put upon the

rack of opinion. No man in this place exactly knows how I feel, in my particular and relative situation, by being so long kept at this bar, and called upon to answer every sort of question that can be imagined about all possible and probable things from such a variety of persons. Witnesses, by all the law I know in the world, are called every where only to speak to facts; to opinions, no where; except in one court of religion in the world.

You have then, I find, some sort of idea of another man's suffering, although not an adequate and perfect one. Cannot you tell the House, supposing I were to give the gentleman who sits below me a slap on the face, what he would suffer? [The member who put the question being a slightly made man, and the gentleman who sat beneath him a very stout man, and the latter turning round quick to look at him, it occasioned a loud laugh.] I mean, what would a person struck suffer when there are visible signs of a violent blow? suppose that the blood gushes out of the nose?—The noses of some people bleed without pain. That gentleman might have a blow on the nose, and he might feel it. I should not. I mean, he would feel it if he were sober; if he were drunk he might not; he might take it all in good part; and, as for the blood, swear it was all good claret.

*A Member.*—Repeat the answer?—If he were inebriated he might not feel. Mr. Chairman, I hope my answers are not improper. I desire to be serious. I am earnest. The answer, I take it, by the law of all evidence, ought to be of the same colour with the question, and pointed to it.

*Chairman.*—Right, certainly.

*Colonel Barré.*—I would not desire to distress the learned gentleman at the bar. He is certainly under personal difficulties in his situation of office, and not being a member; but I see he bears his examination with much patience and good-humour. We were all going to be very dull, and he has enlivened us. He has been asked above a hundred questions, and has parried them all: not one decisive answer have we got. I did not expect he would have kept his ground so stoutly against numbers. I will now beg leave to try him. I undertake, Sir, to ask him one very easy question, which I think he may and will answer. What do you think is the King of Prussia's religion?—I have read some of his works, if the writings are really his; although some people have

doubted the title, "*Œuvres du Philosophe de Sans Souci.*" His religion may be judged from them.

I desire to know, Sir, what you judge the King of Prussia's religion to be?—From them, I believe his Majesty has no formal religion.

I am the only person who has got a direct answer from the gentleman. If the province of Canada were to be ceded to his Prussian Majesty, what religion would he introduce into it?—A soldier's religion.

What is a soldier's religion?—If I were a soldier, Sir, I would answer the words; my honour.

What is a lawyer's religion?—His honour, too; not to give up his client. But I suppose the gentleman knows there are two orders of men in this country, the civilians, and the common lawyers. I am no common lawyer. The religion of which?

Of both?—The common lawyers must answer for themselves. I can readily answer for the civilians: they are ecclesiastical lawyers, and subscribe; they are of the religion of this country by law established.

Col. *Barré*.—I see, Sir, there is no hitting the gentleman; but I have read an opinion of some weight in a book here in my hand: it is so laid down, that I think the gentleman cannot escape answering it. With the leave of the House I will read it: "In order to judge politically of the expediency of suffering the Romish religion to remain an established religion of the state in any part of your Majesty's dominions, the Romish religion, I mean its doctrines, not its ceremonies, ought to be perfectly understood. The opinion of the royal author of the '*Mémoires de Brandenburgh*' seems to be conclusive on this head to every sovereign power, that the Protestant religion is the best both for the prince and the people; because there is in it no middle power to intervene and stand before the prince against the people, nor before the people against the prince." The House now sees why I put the other question. Did you ever read the '*Mémoires de Brandenburgh*?' Is that which I have read the King of Prussia's opinion? Is that opinion in the '*Mémoires de Brandenburgh*?'

I have read a book with that title; but whether this book was his writing, or whether, being his book, that was his opinion (for many people write books who are not of opinion with their



own books) I do not know. There is something like that opinion in the book.

Colonel *Barré*.—The book, Sir, in which this opinion is recommended and adopted, ends with the name of the learned gentleman at the bar.

Dr. *Marriott*. (Bowing with great respect round to the House, and laying his hand on his bosom) I now subscribe myself to that opinion most seriously and most sincerely.

He was then ordered to withdraw.

Lord *North*.—I apprehend we have now gone through the evidence of all the gentlemen ordered to attend. There are several papers, which I will move to have read.

Mr. *Baker*.—Early in the day some one proposed, that General Murray should be directed to attend; but if these papers are now to be read, I suppose we are not to have him at all.

Lord *North*.—I submit, whether the two last days have not given us every necessary evidence. Besides, the general left the province five years ago.

Mr. *Thomas Townshend*, jun. — General Murray is a material evidence, and he will not take up much time.

Captain *Phipps*.—I just now saw general Murray in the House. You may examine him now.

Mr. *Cooper*.—The usual way is to have an order of the House; but if notice be taken of the witness being in the committee, he may be examined.

General Murray was gone.

Captain *Phipps*. — His examination will not be a long one. We shall not have the trouble of fishing for an answer from the general. He saved the town of Quebec by the spirit and wisdom of his conduct, and had a great share in reducing Minorca; and was useful, no doubt, upon the first establishment of the civil government. I was there at the same time, and a witness of what he did.

Colonel *Barré*.—Will the noble lord consent to general Murray's attending on Monday?

Lord *North*. — I am not against his attending now. I shall, I apprehend, offer my objections on Monday.

Mr. *Dempster*. — This is the first time I ever heard any objection made to hearing a witness. The noble lord says, he apprehends he shall oppose.

Colonel *Barré*. — If, after admitting the necessity of calling for information, you now refuse it, I shall oppose the reading of these papers. If you refuse this evidence, why send your serjeant formally for him? I had the honour of serving with the general at the sieges of Louisbourg and Quebec. A gentleman who stood so high in the opinion of an oppressed people, who witnessed the devastation of the country, and who remained in it as military governor, in the hopes of alleviating their situation, must know what were their wishes and expectations at the time, and be able to tell you what will be the probable effect of the new government you are about to impose on them. Such a man must be a proper witness to call: you will have no evasion in his evidence; it will be brief and accurate; and without it you cannot, with propriety, proceed a step further.

The Chairman reported progress, and obtained leave to sit again on Monday. Mr. Baker moved, that General Murray<sup>(1)</sup> should attend on that day.

Mr. *T. Townshend*, jun. — I hope he will be allowed to come here. We shall then hear some reason. For God's sake, why oppose so fair a motion? Is it for the sake of gaining time? Is it because I was imprudent enough to say, that the general concurred in opinion with Mr. Masseres? I believe, when the noble lord gave his consent to hearing him, and sent the serjeant-at-arms in quest of him, he well knew he was not in the House.

(<sup>1</sup>) The hon. James Murray, fifth son of Alexander, fourth Lord Elibank. He had distinguished himself in the action of September, 1759, which decided the fate of Quebec, and in which Wolfe fell. In 1763, he was appointed governor of Canada, and in November 1774, governor of Minorca. He died in 1794.

*Lord North.*—The honourable gentleman may believe whatever he pleases. I care not what he thinks of me. I never pay any regard to what a passionate and prejudiced man may say. If gentlemen were desirous to have General Murray's testimony, why did they not move for his attendance. How is it, that they did not find out before, that he had been one of the governors of Canada? He is certainly an excellent officer; but if every person is to be called who has happened to have resided in the province, we may go on for ever and ever. I shall be against the motion; let my doing so be called by whatever name it may. His attendance is not to give necessary information, but to create unnecessary delay.

*Mr. T. Townshend, jun.*—I rise, Sir, perfectly cool. The noble lord says, he pays no regard to what a passionate and prejudiced man may say. Who the passionate and prejudiced man is, I leave the House to judge. I said before, and say again, that it is indecent to refuse the motion for the general's attendance; and it must have been passion, it must have been prejudice, that could make the noble lord say, that the evidence of a gentleman who had been governor for some years, was just the same as the evidence of any other man who happened to have been in Canada. Let our actions speak for us. Let the noble lord be judged of, as having opposed the motion; and let me be judged of, as having supported it; and then let passion and prejudice be fixed upon him who most deserves it.

*Lord North.*—I beg pardon, if I have spoken with too much warmth. I certainly did conceive, that what the honourable gentleman threw out was a home charge against me. If I have spoken with passion, it has been the suddenness of the charge that made me do so.

*Mr. Baker.*—The noble lord seems to apprehend, that if we examine General Murray, we shall have every inhabitant of Canada at our bar. But the question is one of words: he is described, not as an inhabitant, but as late governor of Quebec. I should wish to know, how the noble lord can reconcile it with any idea of consistency, that

it should be proper to move for the attendance of those other gentlemen, and not be proper to move for the attendance of General Murray. It has been suggested, that there is a difference of opinion between General Carleton and General Murray, with respect to the number of inhabitants of the province. That, Sir, alone, is a sufficient ground for ordering General Murray to attend. In a matter of this importance, let us not entertain any idea of haste; let us do justice.

Captain *Phipps*. — The House will not do its duty, if they do not hear the general. This bill was brought late into the House of Lords, where it passed with little or no inquiry, and was brought down late into this House. If it is to be crammed down our throats in this manner, it will be the most arbitrary measure ever passed by parliament.

Mr. *Dempster*. — Why this material evidence should be withheld from us, I cannot see. I have been disappointed, and I think General Murray would give me the information I stand in need of.

Mr. *Charles Fox*. — I confess myself, Sir, to be one of those who are passionate and prejudiced, and liable to human frailties, and who consider it necessary to call in General Murray. This House will show itself superior to all human frailties, if it goes on with the bill, without hearing the general. Such is my view of the subject. The noble lord seems to have always two opinions. Most people's second thoughts are said to be best; but the noble lord's second thoughts are generally the worst. About half an hour ago, the noble lord thought the evidence was proper to be heard; but now he objects to it, and says that is an entirely new thought. But this, Sir, is not the fact. An honourable gentleman mentioned the subject some time ago; and is it not consonant with established rules, that when I call for evidence, I am to determine whether it is necessary to have more? If all the evidence had agreed, you then would have some ground of argument to say, we

have thorough information. I am, perhaps, passionate and prejudiced, but my passion and prejudice lead me to think, that this has not been the case. Nay, I venture to go so far as to say, that it never was conceived to have been the case. I shall not be told, that Mr. Maseres and General Carleton have given perfect accounts, or have been able to answer all the questions material for information. The House thought it material to know, how the laws were administered, whether they gave satisfaction or dissatisfaction, before they determined on giving the former laws to the colony. The judge advocate did not give us his opinion. We could not foresee that a witness would be captious, and seek for delay. Upon the noble lord's own ground, we ought to move for the judge advocate's report. Sir, I am one of those who think ill of the bill. I like it to pass upon the present evidence, as well as upon any other ; but how far it will gain the gentlemen opposite any degree of grace, any degree of dignity, any degree of popularity, let those individuals judge who would not only have refused evidence, but acted in the teeth of it. I really am surprised, that gentlemen, who bring in such a bill as this, should talk of want of time. Was it not competent to them, to bring it in at the beginning of the present session, or even in the last ? It is their fault, and not the fault of those who moved for evidence. Allowing this bill to be everything it could be wished, I believe the noble lord will not contend that it is a bill of absolute necessity. The delay of a week or a fortnight is not material ; nor has it been thought proper to urge so ridiculous a pretence. I adopt a passionate and prejudiced word. I must think the refusal of the motion perfectly indecent.

Lord *North*. — I flatter myself that the inconsistency of my conduct does not appear to the House, as it has done to the honourable gentleman who spoke last. General Murray has been so long out of the province, that I do not think his evidence can be very material ; but I yielded at the desire of the committee, supposing he could be called in immediately. When, however, the same proposition comes,

in a manner that would cause delay, it is perfectly consistent in me to have a different opinion. That I may have changed my opinion I am very willing to own. To persist always in the same opinion, is not so much the sign of wisdom, as it is of self-sufficiency.—A love of popularity has been insinuated against me. It is necessary that I should solemnly declare, I never did desire popularity, I never did know of any person who meant to compliment me. Praise and dispraise are distributed, by means of insinuations, for the mere purpose of carrying some point, not because the person praised or dispraised deserves approbation. I solemnly declare, whatever compliments were insinuated concerning me, and God knows such compliments are very few, I never knew of them. If the honourable gentleman would attend to anything I could ask, it would be humbly to supplicate him to cease complimenting ; it does no good to the man or the business. As for popularity, if popularity means the good opinion of men instructed in the matter of fact—if to have the character of a good public servant, to love what is right, to do what is right—if that be popularity, then popularity must be my desire ; but if popularity is hunting after the opinion of the day—if popularity is what is made by art, and contrived to pass for glory at the moment, without any solid ground of deserving public approbation—if that is popularity, I disclaim it.

Governor *Pownall*.<sup>(1)</sup>—I am against General Murray's being called in. I said to him, under the gallery, I perceive you will be called in. Can you give me information as to the boundaries of old Canada, before you commanded, by the proclamation ? He answered, that his commission described it precisely. Now, Sir, I will venture to affirm, that his commission does not describe it precisely, but gene-

(<sup>1</sup>) Thomas Pownall, Esq. This learned antiquarian and politician was, at this time, member for Tregony. In 1757, he was appointed governor of Massachusetts' Bay, and subsequently of South Carolina. He died in 1805.

rally.<sup>(1)</sup> I asked him, if he had ever seen the edict that did settle it—a boundary well known in the government of Quebec. He said he had never seen it, and knew nothing of the boundary. I was going on; but when he might have been called in, he withdrew. The gentlemen who moved and seconded did not know this; but his withdrawing at that moment certainly does look like an affected delay. It affects me so much, that I shall vote against his being called in.

Mr. *T. Townshend*, jun.—I reported no private conversation with regard to General Murray. I heard him the length of three or four benches.

The *Solicitor-General*.—Supposing that to have reached the noble lord's ears, it must have done him great injustice. I imagined General Murray's ideas were not the same with those of Mr. Maseres, but that he was favourable to the bill; and I said so to the noble lord.

Mr. *Baker*.—I could not desire him to go away, for I do not know him by sight.

Mr. *Dunning*.—I hear from one honourable friend, that the general can give useful evidence; I hear from another that he cannot. I hear from one member that his evidence will be friendly to the bill; from another, that it will not. My opinion is, that he can give material evidence, because he is an intelligent man, disposed to make observations, and ready to communicate them. This is very clear, that he must feel himself injured by what has now

(<sup>2</sup>) In the commission appointing General Murray governor of Quebec, the province is stated to be "bounded on the Labrador coast by the river St. John; and from thence, by a line drawn from the head of that river through the lake St. John, to the south end of the lake Nipissim, from whence the said line crossing the river St. Lawrence and the lake Champlain, in forty-five degrees of northern latitude, passes along the high lands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea; and also along the north coast of the Baye des Chaleurs and the coast of the gulf of St. Lawrence to Cape Rosières; and from thence crossing the mouth of the river St. Lawrence, by the west end of the island of Anticoste, terminates at the aforesaid river St. John."

been thrown out. Let him be asked, whether he can give information, or cannot ; whether he is a friend to the bill, or an enemy ?

The *Solicitor-General*. — It would be rather singular to call a gentleman to the bar, and ask that blunt question, are you a friend or an enemy to the bill ?

Mr. *Dunning*. — I pledge myself to the House, that I would find that out in a minute.

The question being put, that Lieutenant-General Murray, late governor of Canada, do attend the committee on Monday, the House divided. Yeas 36. Noes 90.

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*Monday, June 6.*

The House resolved itself into a committee on the bill, Sir Charles Whitworth in the chair. The preamble being postponed, and the first clause read ; viz.—

“ And whereas, by the arrangements made by the said royal proclamation, a very large part of the territory of Canada, within which there were several colonies and settlements, of the subjects of France, who claimed to remain therein under the faith of the said treaty, was left, without any provision being made for the administration of civil government therein, and other parts of the said country where sedentary fisheries had been established and carried on by the subjects of France, inhabitants of the said province of Canada, under grants and concessions from the government thereof, were annexed to the government of Newfoundland, &c. be it enacted, that all the said territories, islands, and countries, heretofore part of the territory of Canada, in North America, extending southward to the banks of the river Ohio, westward to the banks of Mississippi, and northward to the southern boundary of the territory granted to the merchants adventurers of England trading to Hudson’s Bay, and which said territories, islands, and countries, are not within the limits of some other British colony, as allowed and confirmed by the Crown, or which have, since the 10th of February 1763, been



made part of the government of Newfoundland, be, and they are hereby, during his Majesty's pleasure, annexed to, and made part and parcel of the province of Quebec, as created and established by the said royal proclamation of the 7th of October, 1763—"

Lord North.—There are great difficulties, as to the best mode of proceeding. I apprehend the alteration I am about to propose will save every right where there is a right. I will explain the amendment I intend to make; if that should not give satisfaction, gentlemen will state what it is they propose to substitute in its stead. We shall then ascertain how far we shall be able to make anything more precise. The question is an extremely difficult one. It is usual to have different boundaries laid down in different manners. Where the King is master of the country, there they are drawn by his Majesty's officers only; where there has been any grant or charter, and it has been necessary to draw a boundary line, then, not only his Majesty's officers but commissioners have been appointed, and together they draw a line, subject afterwards to an appeal to the privy council; therefore, that distinction is made here. It is intended, immediately after the passing of this act, to go on with the project of running the boundary line between Quebec and New York and Pennsylvania, &c., belonging to the Crown. This is made to prevent the province of Quebec from encroaching on the limits of any of those grants, where no boundary has been settled. I find many gentlemen are desirous of having something still more precise, if possible. To this I have no objection; but we are so much in the dark as to the situation of this country, that it is not possible to do anything more safe, than saving the rights of the other colonies, leaving them to be settled on the spot by commissioners. Persons possessing local knowledge can act better than we can. For that reason, I propose to leave out the words, "heretofore part of the territory of Canada," and insert "extent of country;" and also to leave out the words "said country," and insert "territory of Canada."

Governor *Johnstone*.<sup>(1)</sup> — I intended, Sir, to have offered a few words before the Speaker's leaving the chair ; but he went out of it without my seeing him. Some other gentlemen were watching, but he escaped even their eye ; I hope, therefore, the committee will indulge me in saying to them, that as the House has not thought proper to call upon General Murray, and as some misunderstanding has arisen upon something he is supposed to have said, the general has empowered me to clear that matter up. That I may be the more accurate, I will read it. The general says, that his expression was to the following effect : that he highly approved Mr. Maseres's evidence as to the matters of fact ; that he gave the House the most accurate information ; that the general does not recollect one circumstance of difference between them, except as to the number of inhabitants ; but that the general is far from wishing it to be understood, that he agrees with Mr. Maseres in all the conclusions to be drawn from those facts. General Murray desires me to say further, that he feels no wish to be examined, neither does he feel any wish to decline it, if the committee think proper to call upon him, but he does not choose to come as a voluntary evidence. Now, Sir, as I am upon my legs, if the committee would permit me to speak to the question, I think I could give them some information.

Mr. *T. Townshend*, jun. — I beg, before the honourable governor goes to the argument, that he will permit me to say one word. General Murray and I understood each other in this matter very well : if any gentleman has taken down the words, I should be glad to know in what respect they are different. I said, that General Murray had confirmed the testimony given by Mr. Maseres. These were my words, and what induced me to make use of the expression was this :—I was going out of the House, and saw General Murray. Upon

(<sup>1</sup>) Third son of Sir James Johnstone, of Westerhall, in the county of Dumfries. In 1762, he commanded, successively, the *Hind* and the *Wager*, in the West Indies ; in 1765, was appointed governor of Pensacola ; and in 1768, became member for Cockermouth.

seeing him, I said, Nobody knew you were in town; you ought not to go away, without being called to the committee. He said, he could add nothing to the testimony which Mr. Maseres had given. Upon which I said, he had confirmed the testimony of Mr. Maseres; and I thought myself justified at the time in saying so. I did not think anything of the conclusion he was to draw from it.

Governor *Johnstone*. — As to the clause now before the committee, and the amendment that the noble lord proposes to make upon it, I will state to the committee what I think. The amendment that the noble lord has proposed does not at all affect my objection to the bill. My objection to it is, that you are going to extend a despotic government over too large a surface; and that you are going to establish a boundary line, with a pretence of bringing it within the line of justice, where God and nature are against you. The pretence that is held out, to induce this House to accede to the measure is, first, that the former government of Quebec, Canada did extend so far, and that as we are about to give the Canadians back their old laws, we ought, at the same time, to give them back the full extent of what has been asserted in this House to have been their ancient territory. For my part, Sir, I never presume to inform the House of anything but matters of fact. I endeavour to make myself master of those facts, before I venture to offer them to the House; and it is upon this ground only, that I wish the House to give any credit to me.—Now, Sir, as I had the honour of being appointed governor of West Florida, it became my duty to make myself acquainted with the boundaries of Louisiana, and I accordingly endeavoured to obtain the best information upon that subject. I was surprised, therefore, to hear it given in evidence, not directly, but insinuated, that the former government of Canada extended as far as you now propose to make it. One of the reasons given by General Carleton for this extension of country was, that the inhabitants of these remote parts might be under the direction of the government of Canada.

The measure can only be defended upon the principle of policy. The pretence is, the protection of the Indian trade. Are we every moment to contradict our former acknowledgements and declarations? Is the report of the board of trade to be held for nothing? Is the same man to support different opinions in this House, to what he does out of it? You have published to your governor, over and over again, that you had limited your provinces. You have published to the Indians many regulations, that no concessions should be made beyond such and such a line; that the rest should be considered as the Indian country, under certain regulations to be established. You afterwards introduce a clause, for bringing down men to the nearer colonies, to be tried for capital offences; and now, in order to keep these people in awe, you are, you say, going to extend it, in order to protect the property of the Indian trader! Sir, the great maxim to be learned from the history of our colonization is—let men manage their own affairs; they will do it better on the spot, than those at a distance of six hundred miles can possibly do it for them. Another contradiction in this bill—and it contains, I think, some of the greatest contradictions in government, as far as my capacity goes, I ever met with—is, that the French commercial system, by the means of licences, is preferable to our own. Upon the whole, Sir, this bill, in my opinion, contrary to all good sense and experience, goes to the establishment of the principle, that to exclude men from the management of their own affairs constitutes prosperity; and, therefore, you give them no assembly. The next contradiction is, that the *habeas corpus* is not essential for every well regulated society; the next, that trial by jury is not the best way of trying civil rights; the next, that bounding an empire by such extensive limits is the best way of extending justice; the next, that a monopoly is favourable to commerce; the next, that it is easier carrying up than down a river; the next, that the Popish religion is better than the Protestant; the next, that the

King's word, passed under the seal of Great Britain, is of no effect ; the next, that an arbitrary council is fit to bind British subjects ; the next, that the feudal tenure is favourable to population ; the next, that the system given us by our ancestors requires to be mixed with the despotism of France ; and lastly, that all which our forefathers have been doing for so many years is to be undone by their successors. All these things, Sir, are to be achieved by the bill now before us. I am therefore heartily against this clause, notwithstanding the amendment ; and I defy any man to lay down a single principle, upon which such an extensive measure can be defended.

*Mr. Edmund Burke.*—We are now settling the clause that is to give limits to the excellent system of government about to be provided for the Canadians by this bill. But, in order to ascertain more precisely what those limits are, I should be glad to get some further information, and I shall move you, that Mr. Pownall be called to this committee: no man is more able, no man more willing to give that information. I move, "That John Pownall, esq., under secretary for the American colonies, do attend this committee."

*Lord North.*—I do not exactly see what the honourable gentleman's object is in calling Mr. Pownall ; but if the limits can be rendered more clear and distinct by so doing, it is possible I shall be very willing to have him before us. To what point does the honourable gentleman mean to examine him ?

*Mr. Edmund Burke.*—I will give the noble lord all the satisfaction in my power. I wish the attention of the committee, as I distrust my powers of explanation, when applied to such an object. The impropriety of the bill has taken its course already. If we had originated this measure above stairs, where maps might have been laid upon the table, no doubt the whole dispute of this day would have been avoided. I shall ask for the attention of the committee ; partly that they may understand me ; partly that I may

understand myself. In the first place, when I heard that this bill was to be brought in on the principle that parliament were to draw a line of circumvallation about our colonies, and to establish a siege of arbitrary power, by bringing round about Canada the control of other people, different in manners, language, and laws, from those of the inhabitants of this colony,—I thought it of the highest importance that we should endeavour to make this boundary as clear as possible. I conceived it necessary for the security of those who are to be besieged in this manner; and also necessary for the British subject, who should be restricted within the limits to which he was meant to be restricted, and not be allowed to venture unknowingly into the colony to disturb its possessors. I wish these limits to be ascertained and fixed with precision, for the sake of both parties. Having this object in my view, I shall first consider the line drawn in the proclamation of 1763. It was drawn from a point taken in the lake called Nipissim: that lake stands to the north of this point. I entreat the attention of the committee; for the escape of a word is the escape of a whole argument. Sir, this boundary was fixed by a line drawn obliquely from lake Nipissim, which line, crossing the river St. Lawrence and the lake Champlain, formed an angle in the latitude of forty-five degrees. This constituted the south-west boundary of Canada: beyond that the province was to extend no further; and, confined within this limit, it remained from the year 1763 to this time. That was then the boundary of Canada; and when that boundary was formed, that was the boundary of the government; and that boundary was fixed there, because it was the boundary of the possession. There was then no considerable settlement to the south-west of that line. This line the people of Canada acquiesced in. They have since come before his Majesty's government, and have laid before it a complaint in which they state, that this was a line drawn especially for the purpose of territorial jurisdiction, and the security of property; but they represent that it is a line ill suited for a growing

country. They do not complain that they have not the legal limits, but they complain of the climate to which they are restricted. "The province," they say, "as it is now bounded, by a line passing through the forty-fifth degree of north latitude, is confined within too narrow limits; this line is only fifteen leagues distant from Montreal: and yet it is only on this side that the lands of the province are fertile, and that agriculture can be cultivated to much advantage." Sir, if no injustice will thereby be done to any one, I don't know a more reasonable request, than that their complaint should be attended to. I am not one who opposes the principle of the bill throughout: if I opposed the principle throughout, I should not oppose it in this stage; it would be irregular. So far as this bill conveys to the natives of that country every right, civil and religious, held either by the great charter of nature, or by the treaty of 1763, or by the King's proclamation, or by what above all it ought to be held by, the lenity, the equity, the justice of good government—I would give the enjoyment of those rights in the largest, and most beneficial manner; but the very same line of justice which I would extend to the subjects of Great Britain ought not, in my opinion, to be conceded to the old Canadians.

Having drawn the line that best becomes the regulation of right, the question comes now—whether what they ask is a favour which can be granted them, without doing a material injury to the most substantial rights of others?—whether the effect of the power given by this clause may not be to reduce British free subjects to French slaves? Now, if the line drawn from lake Nipissim is to be altered, at whose expense will it be altered? The colony of New York claims all the country south of that line, till it meets with some other British colonies of known boundaries; and these are claims which ought at least to be heard, before the people of that colony are handed over to the French government.

However, after this line had been settled to forty-five de-

grees, it was found that the French and English maps differed very considerably as to the position of this degree; and this difference occasioned a great deal of confusion, so that the colony of New York, which bounds next to Canada, had perpetual controversy about the liminary line. Though they agreed that the line should be settled to forty-five degrees, they never agreed where the forty-fifth degree of latitude was. To remedy this confusion, in 1767, the colonies, by a very provident order of the Crown, determined to hold a meeting on the frontiers, at which they took an actual observation, and fixed the latitude of forty-five degrees to the head of the northern part of lake Champlain. When they had fixed this limit, the colony of New York gave up all that part included in the triangle, the base of which was a line drawn through the angle of forty-five degrees. All this was given up for the sake of peace. A definition of that line so settled was brought home and submitted to the board of trade; who examined it, and reported that they thought it a proper line to be drawn; which report was confirmed by his Majesty in council. Having got that line drawn, a parallel was to be run from east to west, till stopped by some other colony: but when the line was fixed of forty-five degrees, the line itself was not drawn, but only the point settled from whence it should be drawn. The east line, however, is actually drawn on the map; but the line on the north-west part was left totally undefined—the point being fixed simply to the head of lake Champlain. The consequence was, that the whole west boundary of New York extending about two hundred miles, a little more or less, including all the best settled part of that province, and inhabited by various persons, civil and military—all this has been supposed to go under that description to the province of Quebec, by the provisions of this bill. To those who objected to so frightful a conclusion, it was said, it was in the power of the Crown, after this act, to adjudge to this province what belonged to it, on the other side of the line. The first thing that occurred to me, after hearing this decla-



ration was, that a law-suit would be the beginning of this happy settlement; and that the claim between Canada and New York, which cost so much blood formerly, would now give rise to an interminable series of law-suits.

With very uneasy sensations on this head I came down to the House. The noble lord showed me the amendment, which by no means relieved my apprehensions. The reason why I feel so anxious is, that the line proposed is not a line of geographical distinction merely; it is not a line between New York and some other English settlement; it is not a question whether you shall receive English law and English government upon the side of New York, or whether you shall receive a more advantageous government upon the side of Connecticut; or whether you are restrained upon the side of New Jersey. In all these you still find English laws, English customs, English juries, and English assemblies, wherever you go. But this is a line which is to separate a man from the right of an Englishman. First, the clause provides nothing at all for the territorial jurisdiction of the province. The Crown has the power of carrying the greatest portion of the actually settled part of the province of New York into Canada. It provides for individuals, that they may hold their property; but they must hold it subject to the French laws, subject to French judges, without the benefit of the trial by jury. Whether the English mode of descent is better than the French, or whether a trial by a judge is better than a trial by a jury, it is not for me to decide: but an Englishman has a privilege that makes him think it is better; and there is, Sir, as much reason to indulge an Englishman in favour of his prejudice for liberty, as there is to indulge a Frenchman in favour of his prejudice for slavery. The bill turns freedom itself into slavery. These are the reasons that compel me not to acquiesce by any means, either in the proposition originally in the bill, or in the amendment. Nay, the proposition in the amendment is a great deal worse; because you therein make a saving of the right of interference with, and may fix your boundary line

at the very gates of New York, perhaps in the very town itself, and subject that colony to the liability of becoming a province of France. It was this state of things, Sir, that made me wish to establish a boundary of certainty. The noble lord has spoken upon the occasion with a great deal of fairness. He says, that if any gentleman will find a boundary of certainty, he will accept it. Whether, if we shall be able to find such a boundary, the colony of New York will be satisfied with it, I know not; but, speaking here as a member of parliament, I do think the colony had better have a boundary much less in extent, yet reduced to such a certainty, that they may exactly know when and where they cease to be English subjects. The boundary originally settled between Canada and New York, by Governor Murray and General Carleton, gave up a very considerable part of what New York was entitled to contest with the Crown, under the first proclamation. That was given up. I am glad the noble lord has got a map before him. They gave up a vast extent of country. I recommended them to give up for peace all that part which lies between that country and the river St. Lawrence, and to take their departure from a line drawn through Lake Champlain in forty-five degrees of latitude, as far as the river St. Lawrence, then following the course of that river through lake Ontario and lake Erie to make it the western bound of the colony of Pennsylvania. These limits and bounds would give New York a territory sufficient to enable it to meet every exigency of government: it would give it a territory saleable and valuable; it would give the Crown a boundary of certainty; it would give the people of Canada a certainty of knowing upon what side of the water their territory began; and it would give the subjects of Great Britain a power of knowing where they can be free. If the noble lord gives me this boundary, he takes off the northern part of the objection; and, in that case, I shall not call upon Mr. Pownall. If the noble lord does not admit this description to be clearly expressed, there are persons enough able to do it;

for it is ridiculous to imagine, that any sense can be conceived, and not expressed in parliamentary words.

In the next place, Sir, having explained myself as well as I can, without having a map in every gentleman's hands who hears me, I shall now only say one word to the noble lord's objection. He does not know enough of the state of that country to be able to adopt the line which he has drawn: whereas nothing can be more geographically distinguished than water and land. This boundary is physically distinguished; it is astronomically distinguished. It has been fixed by actual observation, and agreed upon by the surveyors. We have everything that geography, astronomy, and general convenience stronger sometimes than either can give, to make this boundary definite.

I shall, therefore, now move the boundary which I have proposed, viz., "by a line drawn from a point on the east side of Lake Champlain, in 45° north latitude, and by a line drawn in that parallel west to the river St. Lawrence, and up that river to Lake Ontario, and across that lake to the river Niagara, and from Niagara across Lake Erie, to the north-west point of the boundary of Pennsylvania, and down the west boundary of that province, by a line drawn from thence till it strikes the Ohio." If the noble lord admits this proposition, the committee will, no doubt, be able to express it in proper words; if not, I must beg that we may receive information from a gentleman who can abundantly inform the House, who has a greater knowledge of the subject than any gentleman within this House, and who is as ready to communicate it as any man I ever knew.

Lord *North*.—What has passed between us, the honourable gentleman has stated fairly. We agree in principle, and I hope we shall succeed in drawing a clear boundary line; but I am doubtful whether a clear boundary line can be drawn by parliament. It strikes me, that the only method is to leave it to be drawn after the passing of the act—leaving it in such a manner, that the line when drawn shall actually form a clear line between the province of Canada and New

York. The line, as far as it appears by the map, is very distinct. The objection I have is precisely what the honourable gentleman has mentioned. I am not clear whether there are not upon the south-east part of the river St. Lawrence Canadian settlements. I have been informed there are. I am sure there are no New York settlements in that part of the world. I think it more prudent to have the boundary line settled upon the spot; reserving, in the act, all those lands that have been granted, under any authority, to the old settlers. If any line can be drawn, I have no doubt the Canadians will prefer their own laws. At first sight, I have no objection to the words proposed, and, if the honourable gentleman desires it, I shall also not object to the witness being called in, nor indeed to any evidence, not likely to involve us in difficulties, that may be calculated to settle a distinct line for the security of the province. It is my opinion, that all this uninhabited country added to Canada, or added to New York, should not be immediately considered as country which the government are to grant away. I do not think that we at all endeavour to discourage settlements, by making those regulations. I hope there will be great caution and restriction on the part of governors against making grants in this western country. The necessity of settling the government goes upon other principles, which I shall have occasion to enter into in the course of the debate; but at present I rise up to confirm the declaration I have made, that if a clear line can be made to the satisfaction of gentlemen, so that they are not likely to involve themselves by drawing a line in Westminster which would be better drawn in America, I shall not *opiniâtre* it, but shall be very thankful to the gentleman who can draw that line.

Mr. *Edmund Burke*.—I shall satisfy the noble lord that there is no inconvenience in the world in drawing this line; no injustice in the world to the Canadians; more injustice in drawing an imaginary line, that may involve the whole colony of New York in confusion. I should be extremely

tender of the privilege of the subject; and therefore I would not disturb any man living in his property. But the fact is, that no man is injured by what I propose; but by what the noble lord proposes, if Canada is in future to have boundaries determined by the choice of the Crown, the Crown is to have the power of putting a great part of the subjects of England under laws, which are not the laws of England. The government of France is good—all government is good—but, compared with the English government, that of France is slavery. We have shed oceans of blood for that government, and are ready, I hope, to shed oceans of blood again for it. Upon the noble lord's proposition, half the colony of New York may be adjudged, and some of it must be adjudged, to belong to the colony of Canada. The fate of forty or fifty thousand souls is involved in this question. At present the colony of New York is the Crown's. The noble lord may adjudge it to belong to Pennsylvania; but he cannot deprive it of the laws of England. Now, however, by an act of parliament, he is going to do so. The Crown has the power, at a stroke, to reduce that country to slavery. It is the power of a magical word; which I hope I shall never see any where exercised but in the play-houses. This is a possible case; the other is certain—that a few Frenchmen may happen to be considered as Englishmen. The noble lord does not suppose there are many. The parties here are English liberty and French law; and the whole province of New York, further than it is defined by actual bound, is in the power of the Crown, not to adjudicate, but to grant, and hand over to the French. I do not suppose, if the Crown were under the necessity of adjudging, that it would adjudge amiss; but it is in the power of the Crown to grant even its power of adjudging. When put on the English side, they are put in the power of the laws; when put on the French side, they are put out of the power of the laws. Let us consider, then, whether it is not worth while to give a clear boundary, and to let the man know whether he is or is not an Englishman. I shall take

the sense of the committee upon it. I am as much in earnest as ever I was in my life. I have produced a practical idea—I can produce practical words.

After a long and desultory conversation, the words proposed by Mr. Burke were inserted. The words—

“Until it strike the Ohio; and along the bank of the said river, westward to the banks of the Mississippi, and northward, to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson’s Bay; and also all such territories, islands, and countries, which have, since the 10th of February, 1763, been made part of the government of Newfoundland, be, and they are hereby, during his Majesty’s pleasure, annexed to, and made part and parcel of the province of Quebec.”  
—were next read.

Sir *Charles Saunders*.<sup>(1)</sup>—I rise to say a few words upon this part of the clause. Though I dislike the whole of it, I shall speak only to that part which relates to the fishery. Your annexing the liberty of fishing to Canada, will take the fishery from the mother country; will take it to America. That part carried on by Canada must go to the French, and thereby be very detrimental to this country. In the first place, no return is ever made here; in the next place, you lose the employing of your own shipping, the furnishing the men with materials, and breeding your seamen. The liberty of fishing should remain under the inspection of the governor of Newfoundland. The act of King William is the best for the fishery: if you give up this, I am afraid you will lose your breed of seamen, and I know no way that this country has of breeding seamen but two; one the fishery, and the other the coasting trade. All other trade is at the expense of men, and whatever hurts your fishery must reduce the naval force of this country. Sir, the fishery is worth more to you, than all the possessions you have put

(<sup>1</sup>) This distinguished naval commander was, at this time, member for Heydon. He died in the following year, and was interred in Westminster Abbey, near the monument of his friend and “brother of the war,” General Wolfe.

together. Without that fishery your possessions are not safe; nor are you safe in your own country. Instead of doing anything to hurt your fishery, new methods should be taken to rear more seamen. God knows, how much you'll find the want of seamen, whenever this country finds it necessary to equip its fleets! For these reasons, I am against annexing the liberty of fishing to Canada, and I hope that this clause, for this reason, will not pass.

Mr. *Gascoyne*.—I agree with the honourable admiral; but I do not conceive, from what I have learned, that the liberty of fishing given in the clause has anything to do with that sort of fishery the honourable admiral means. They are sedentary fishers, taking seals and sea-cows. It does not appear, that there is any cod fishery along that coast.

Mr. *Prescot*.<sup>(1)</sup>—As I have, in the course of business, some knowledge of the question before the House, I can take upon me to say, that the honourable gentleman who spoke last is mistaken. From the first conquest of the coast, there were several cod-fisheries near the strait of Belleisle. Whether they are continued I cannot say, but I believe they are. A relation of mine, much concerned in the fishery, a Captain Darby, was examined by the board of trade in my presence. The French may possibly have interfered with us. It may become a valuable fishery. The evidence was, that the fish was of a better kind, and ought to be encouraged for the Spanish market. It would be better to unite this fishery to the government of Newfoundland. We ought to discourage carrying on the fishery of the continent of America with Europe; as it gives rise to a great deal of contraband trade.

Sir *Charles Saunders*.—I should not have troubled the committee, if I had not been sure of what I said. We have had a man-of-war there, ever since that country has been

<sup>(1)</sup> George Prescot, esq., of Theobald's, in the county of Herts; grandfather of the present Sir George Prescot, and founder of the banking-house of Prescot, Grote and Co.

put under the inspection of the governor of Newfoundland ; who has settled all disputes, agreeably to the act passed in the reign of King William ; and that is the reason I mentioned that act.

Lord *North*.—If the consequence stated by the honourable gentlemen is likely to ensue, and there is no method of preventing it, undoubtedly it is a consideration of most serious importance. But this liberty of fishery was grounded upon two points, and for two reasons : the first and principal reason was justice ; the other was the nature of the fishery, which is supposed to be peculiar to the fishery of that coast. When Canada was conquered, and Montreal surrendered upon capitulation—while the inhabitants of Canada were secured in their property, there were at that time grants for fishing for seals and sea-cows ; which grants were profitable to the Canadians, and were as much secured to them as any other species of property. They let the fishing-coast from time to time upon lease. These leases expired about the year 1762, and new leases were granted. The seal and sea-cow fishery was, I understand, entirely sedentary ; carried on in the little creeks between the coast and the island. It is a sort of decoy for fish. It is a decoy that requires all the nicety, all the care, all the silence possible. The trade cannot be carried on by competition. It must be carried on separately and distinctly, or the fishery will be ruined. It requires all the people to go away at a certain time in September, and return in December ; and therefore it must be carried on by persons who stay there in the winter. The ship fishers, I mean those who go from this country to that, have been permitted to fish in different harbours ; but the competition almost entirely destroyed the fishery. It is therefore obvious, that this fishery cannot be carried on in the manner of the Newfoundland fishery, and consequently cannot be subject to the laws of that fishery. This was the reason for inserting this clause ; but if it has a tendency to destroy the cod fishery, and diminish our stock of seamen, it ought not to stand in the bill. I



do not, however, conceive that giving this right to the inhabitants of Labrador will have any such effect.

Captain *Phipps*.—Let us consider, Sir, whether it be politic to suffer this cod fishery on the coast of Labrador to be in the hands of the Canadians. The consequence will be, that the French will be received in Canada with open arms; that they will carry their manufactures thither; and that an intimate intercourse will be kept up between the two countries, to the great injury of the English settlers. They will also have opportunities of stirring up discontents among the Indians. All this shews the necessity of another bill, placing these fisheries under the government of Newfoundland. As far as my little experience in my profession goes, I do not hesitate to declare, that this clause, while it will be one of the severest blows this country ever met with, will be one of the most material benefits that ever accrued to France.

Mr. *Cooper*.—It is not the intent of this clause to protect the sedentary fishery to the injury of the other. Suppose, therefore, a proviso were added, that nothing in this act should extend to prevent the government of Newfoundland, &c. If I am rightly informed, the cod fishing is not carried on at the same time. If so, it may be fixed at a season which shall not interrupt that carried on in the same situation by the sedentary fishers. As to the condition of our navy, I have the satisfaction of stating, that the number of seamen has greatly increased of late years.

Capt. *Phipps*.—It is impossible to carry on the sedentary fishing, without a property on the water-side. The clause will destroy the right of those who come to try for fish there, and will occasion endless disputes. If any sedentary fishing is necessary, it ought to be put under the government of St. John's. The mischiefs that may arise from this clause should be frequently rung in your ears, until they make an impression upon you.

Mr. *Prescott*.—The cod fishery and the seal fishery are carried on upon the same coast. It is usual for them to

leave some of their people there in the winter. It is for the interest of this country, that they should be detached from the government of Canada; they should, therefore, have a government to protect them in winter as well as in summer.

Mr. *Byng*.—We have heard a great deal of the small number of Protestants in Canada. That is one reason why the sedentary fisheries should be put under the government of Newfoundland; for unless that is done, we are handing more of our people over to the Canadian laws.

Lord *North*.—The last alarm is not well founded. The British may and will carry on the fishery to Canada. The law they are under at present is rather more arbitrary than the Canadian law.

Sir *Charles Saunders*.—I do not see how it is possible to carry on the fishery there. Where are the disputes to be decided? At Quebec? The distance of the fishery from Quebec is so great, that the loss of time and the expence would ruin any fishery in the world; whereas the governor of Newfoundland, upon any dispute arising, can settle it in half an hour; neither time, trouble, nor expence, is lost: immediately they go to work again. I never knew a trial to last half an hour in my life.

Lord *John Cavendish*.—I do not know the question at present. No question has been put upon the clause. I hope we are not quite ready to agree to it. This whole description of Canada goes very much against my judgment. I will, however, say a few words to the particular clause. The remedy proposed seems to fall short of the necessity of the case. I think this proviso would not reach the point. I believe the only pretence the governor of Newfoundland had for extending his authority there, was, that by the proclamation this coast was put under his direction; but when this authority shall be withdrawn by an act of parliament, he will have nothing to do with it. It will be left to doubt. The seal fishery had better be provided for by itself, than that this great nursery of our seamen should be endangered.

Mr. *Thomas Townshend*, jun.—This, Sir, is undoubtedly a very material part of the bill, and we have had both sides of the question stated to us. The honourable admiral has told us, that that great nursery of British seamen will be in much danger from the passing of this clause. The noble lord on the other side, and the honourable secretary of the treasury, have not denied any one of the assertions which have come from the gentlemen of the navy, and from the honourable member concerned in the trade under the gallery. The noble lord has obliged the committee with a very agreeable description of the seal fishery; he has told you a great deal of the animal itself. He says, that the decoy requires great nicety and care, and all the silence possible; and therefore he proposes, that Frenchmen not being noisy, not being loquacious, it is better to trust that fishery to them, than leave it to the English. The honourable secretary to the treasury has congratulated the country upon the great increase of seamen, which he attributed to the favourable state of the Newfoundland fishery. Sir, I believe the seal fishery has been carried on by the French since the peace: now, from the very nature of the sedentary fishery, if once they are established there, if once they have a property in the stations, they must have the refusal of the market; they must set out with an advantage over the individuals that come from this country. Is it necessary to take great pains to show you that they have their eyes upon this country; that there is no part of their trade to which they pay more attention; that they will strive to avail themselves, from the similarity of manners and religion, of every opportunity of introducing their fishery, to the exclusion of that carried on by British subjects? Is it necessary to say that French manufactures will, by this means, be introduced into Canada? If the noble lord has a mind to regulate the seal and sea-cow fishery, for God's sake let him confine this bill to one or two points, and leave the rest to a future session. Surely this cannot be too great a compliment to pay to that fishery which is

of so much importance to us. The very existence of this nation depends on its naval power; and everybody knows that the great foundation of the British navy are the fisheries and the coasting trade.

Mr. *Edmund Burke*.—I cannot think that the gentlemen opposite will not give way to so reasonable a request. We have proceeded with this mischievous bill thus far. Is not this enough, without obliquely bringing into it another branch—without deranging the whole nautical policy of the country? It is true, that the government of Newfoundland is of a more arbitrary nature than that of Quebec; a military officer, living on board a man-of-war, being the governor of that place? But to say that these people will, by the bill, be put in a better condition, is to say nothing to the purpose. They are sent there to form a nursery for the navy; and that is the best government for them which best accomplishes that end. Cannot the government of Quebec be settled without this clause? The best way would be to bring in a separate bill for Newfoundland; and then the sedentary and the transitory fisheries, would be legitimate objects of inquiry; but here, while we are discussing the boundaries of Canada, we find ourselves in the middle of the fisheries on the banks of Newfoundland. Let trade be regulated upon principles of trade, government upon principles of government, and the navy upon principles best calculated to rear recruits for the navy; but let us not jumble together, in so oblique a manner, parties so very discordant. Let us not, for the sake of hooking in the fishery, give a boundary to Canada which is by no means necessary or expedient, and thereby create further difficulties.

The *Solicitor-General*.—It is extremely difficult, upon such a point as this, to contend, or to appear to contend, against the authority of the honourable gentleman, to whom it may, perhaps, be very truly said, that this country owes all the fishery it has upon the coast of Newfoundland. Yet I will beg the indulgence of the committee while I state,

in a few words, how the different opinions entertained upon it may, in my view of them, be reconciled. It is not, I maintain, foreign to the purpose of this bill, to consider whether it is better to annex the Labrador coast to Canada, or to throw it into any other government. To come to a correct conclusion, the committee should take into its consideration the present state of that coast, and the manner in which the fishery is carried on. In 1763, the coast of Labrador was made part of the government of Newfoundland. Upon that coast an advantage is to be derived by fixing a fishery, to be exercised at a particular season of the year, which does not interfere with the regular cod fishery; and if this object is obtained, it is so much gain to the country. But, though annexed to the government of Newfoundland, gentlemen know that the governor stays there no longer than to the end of the fishery: after that time there is no resident government; so that the Labrador coast must either be annexed to the government of Newfoundland or to that of Quebec, or there must be an especial governor appointed for that district. If annexed to the government of Quebec, there will be magistrates, under the authority of the governor, acting there to inquire into and settle any disputes that may happen. The cod fishery, as exercised there, I take to be a subject perfectly distinct. I think no evil could arise to that fishery if, by express words, the government of Newfoundland had the same power and authority given to them upon the coast of Labrador as is given, by the act of King William, with regard to the Newfoundland fishery; and I shall submit these words—"Provided always, that nothing shall extend to take from the powers of the governor of Newfoundland, during the season of fishery, all persons concerned in the cod fishery; but that they be extended to the cod fishery in the territories last before mentioned."

Captain *Phipps*.—These words will not at all cure the evil; because the residents, who carry on the sea-cow and seal fishery, will have possession of the land, and will thereby

have every opportunity of carrying on the cod fishery with impunity, to the injury of this country. My learned friend holds out a plausible protection to the cod fishery, and at the same time cuts it up by the roots.

Mr. Cavendish, after some further debate, divided the committee on the question, that that part of the clause which relates to Newfoundland should stand part of the bill: Ayes, 89; Noes 48.<sup>(1)</sup>

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*Thursday, June 7.*

The House having resolved itself into a committee of the whole House upon the bill, the following clause was read:—

“ And whereas, the provisions made by the said proclamation, in respect to the civil government of the said province of Quebec, and the powers and authorities given to the governor and other civil officers of the said province, by the grants and commissions issued in consequence thereof, have been found, upon experience, to be inapplicable to the state and circumstances of the said province, the inhabitants whereof amounted, at the conquest, to above one hundred thousand persons, professing the religion of the church of Rome, and enjoying an established form of constitution, and system of laws, by which their persons and property have been protected, governed, and ordered for a long series of years, from the first establishment of the said province of Canada: be it therefore further enacted, by the authority aforesaid, that the said proclamation, so far as the same relates to the said province of Quebec, and the commission under the authority whereof the government of the said province is at present administered, and all and every the ordinance and ordinances made by the governor and council of Quebec for the time being, relating to

<sup>(1)</sup> “ The danger of losing the fisheries, and the feeble manner in which the proviso was supported, induced me to vote against the words being in the bill.”—H. C.

the civil government and administration of justice in the said province, and all commissions to judges and other officers thereof, be and the same are hereby revoked, annulled, and made void, from and after the first day of May, 1775."

At the suggestion of Mr. Dempster, instead of the words "amounted, at the conquest, to above one hundred thousand persons," the words "amounted, at the conquest, to above sixty-five thousand persons," were substituted.

Mr. *Edmund Burke*.—Instead of annulling all the existing ordinances, I think it would be better to leave the local legislature to find local remedies. I am against destroying laws, of the tendency of which I am totally ignorant.

Governor *Johnstone*.—I am sorry to differ with my honourable friend, with regard to the propriety of inserting or leaving out this clause. I am clearly of opinion, that these ordinances ought to be repealed. The first business of the legislature is to start from a certain point. I am well convinced, that all these ordinances are illegal: nothing but necessity could have induced men to live under them. At Pensacola I was under the necessity of making some local laws. I constituted an assembly, and found the exceeding good effect of it. They did not alter one of those laws: they are what has governed the colony ever since. The greatest fault of the governor of Quebec was his starting by the King's proclamation, instructions, and commissions, without a parliamentary authority. That is the great source of all the disputes with our colonies. If we had settled them under a parliamentary commission, there would have been no doubt of their dependence on this country; you would not have had this question started. With respect to the proclamation, I cannot think it was unwise. I consider the steps we are now taking unwise; not the proclamation. Whenever the King's subjects emigrate, they carry the law and the constitution along with them. Establish a proper legislative authority. If you do that, what need you be afraid of? The people will compel you to do

so in due time. Never, since the conquest, was there such confusion in Canada as there is at present; and all arising from the conduct of some of the civil officers sent over from England. I do not wish to look back. I feel grateful to those who sent out the gentlemen who have appeared at the bar. If only such men had been sent, I am persuaded the Canadians would have been reconciled to our laws. The real complaints of Canada were all made before those gentlemen went there.

Mr. *Dempster*.—By this bill, British subjects are deprived of the trial by jury, and of all the other rights enjoyed under our constitution. An honourable gentleman says, that the limits of the province being altered, the laws now in force are not applicable to its enlarged condition. Now, I should be glad to know, Sir, when the English laws were extended to Wales and to Ireland, whether the parliament began by repealing the old ones? As, between this and May next, a council will be appointed to take into consideration all the ordinances of the province, would it not be better to leave them as they are, and to let those gentlemen, when they arrive there, repeal such as are objectionable, and leave standing such as require no amendment?

Mr. *Thomas Townshend*, jun.—The best way, at present, is to confirm the old ordinances. By this clause we admit the French law into Canada, and destroy the English law. Is it necessary, because you give them back their old laws relating to their persons and property, that you should take away from them all the laws relating to their civil and religious rights? It is better that the people of Quebec should bear the misery of English law a little while longer, than to have a new code of laws given to them, that may be laid aside at the end of six months.

Lord *Beauchamp*.<sup>(1)</sup>—I do not see that the objection to

(1) In 1794, his lordship succeeded his father, as second Marquis of Hertford, and, on his death in 1822, was succeeded by his son, the present marquis.



the clause has any foundation whatever. Besides their own laws and customs, we give to the Canadians the criminal law of this country ; and is not that a sufficient body of laws for them to be governed by ? The object of the bill is to take the province out of the most cruel situation in which a respectable country ever stood—that of being in a state of uncertainty as to the form of government the people are to live under.

Lord *John Cavendish*.—When I objected to the second reading of this bill, I was asked, with an air of triumph, whether the government of Canada did not want regulation ? My answer was, that it was a reproach to the government there, that they had waited so long without doing anything ; but that this bill was framed upon such ruinous principles, that, in every step of its progress, it led to nothing but confusion, and ought to be withdrawn. We should withdraw the bill, and bring in another upon totally different principles. I know that, in 1767, the House of Lords came to a resolution that something ought to be done for the better regulation of the government of Quebec. The board of trade were in such a hurry that something should be done, that General Carleton was sent for over. They could not endure delay in 1767, and now, in 1774, we are leaving every clause of the subject in general words : we are leaving them for future kings to determine what shall be done with them. Whether it is owing to want of abilities, or what, I know not, but after nine years of preparation, we ourselves are doing nothing.

Mr. *Cornwall*.<sup>(1)</sup>—It is much, Sir, to the honour of parliament, that every gentleman who has spoken in the course of the debates on this bill, appears to have been struck with the tyranny of an attempt to destroy all the prejudices, with regard to religion and the laws, of the people of a country which has now been in our possession eleven years.

(1) Charles Wolfran Cornwall, esq., at this time member for Grampound, and a lord of the treasury. In 1780, he was chosen Speaker of the House of Commons, and died in 1789.

For my part, I think the progress of your reformation has gone on gloriously in that country. We have had the evidence of the two able lawyers who resided in it for some years, with so much honour to themselves and advantage to the inhabitants; and that evidence has convinced me, that the Canadians were prepared in due time to receive the entire of the criminal law of England; and that the same will be the case with the civil law, no gentleman who knows how closely the principles of the English law twine about each other, can have any doubt. With regard to religion—the same liberality which has been extended to their laws has been extended to their religion also. But it is supposed, that a decided preference has been given to the Roman Catholic over the Protestant. Now, Sir, with the exception of that ill-used country Ireland, is there an instance in the world of the established religion being forced upon any country, contrary to the sense of its inhabitants? Does history furnish us with an instance of an establishment being forced upon a country; the majority of the people of which country were of a different faith? I fancy not. The existence of two established religions, in one and the same country, is a novelty in the British dominions. How is that novelty to be dealt with? The establishment of a religion in a country is a thing very distinct from its toleration. I have always understood, that, in every country, a certain portion of the public money has been appropriated for the establishment of the popular religion of that country. This bill goes upon that principle. Every professor of the Roman Catholic religion is expected to protect and support that religion; and if, at a future day, the Protestant should become the popular religion, the professors of it will be expected to do the same. For God's sake, let us consider what is at present the situation of the Protestants!—what they are in point of numbers and in point of establishment! Three hundred and sixty individuals scattered throughout that immense country, and not a single church or chapel for the exercise of this religion! In my opinion, the clause goes

fairly to meet the system which necessity has introduced into the colony.—I now proceed to take notice of the clause which enables his Majesty to appoint a legislative council for the affairs of the province. The first suggestion, I own, that presented itself to my mind was, whether an assembly could or could not, in the present situation of the colony, be established? With very few exceptions, Sir, I believe the members of this, or of any other House, would say, that in the present condition of Canada, the establishment of an assembly would be a most unwise measure. The first absurdity that presents itself is, that a portion of such assembly would be English, and a portion Canadian settlers. The great majority would consist of old Canadians. But, having proceeded thus far, having got an assembly, in what language would their proceedings be carried on? When they had assembled, would they understand one another, when they came to debate, as we, Sir, are now doing, upon matters of public concern? And then, with regard to this legislative council, the power of taxing the people is not committed to that body. What they have to do is only to make such laws as will render the people happy.—The next point is one which must, I think, have originated in Canada. They do not wish to have a jury, a true English jury, in its most essential characteristic. Now, Sir, if, in decisions upon property, there is one thing more valuable than another, it is the unanimity of the jury in their verdict. What is proposed to be substituted in its stead? A decision by a majority of two-thirds, or of seven out of thirteen. I am very far from saying that a jury upon the English plan is not preferable to such a jury; on the contrary, I think it the very best; but I would ask honourable members, whether we are not tickling our ears with the magical name of juries? I beg leave to thank the committee for allowing me, in this stage, to deliver my opinion upon the leading points of the bill; which I ought to have done sooner.

*Mr. Dunning.*—The legislative council is a subject for future consideration. It is too early to enter upon it at pre-

sent. The honourable gentleman who spoke last encourages me to proceed; and I hope I shall not be considered irregular if I follow him. According to my apprehension, Sir, it is grossly improper, that the proclamation, and the ordinances made by the governor subsequent to that proclamation, should be repealed; but in saying this, I hope I shall not be understood to mean, that it is my wish that those ordinances should, uncorrected, remain the law of Canada. They undoubtedly require explanation and amendment; but I do not wish to see them repealed and abolished. If it had been made out to our satisfaction that, in the words of the clause, the constitution of Canada, grounded upon the laws of England, had been found, upon experience, to be inapplicable to the state and circumstances of the province, it would then become our duty to consider what constitution should be given in the place of it. But, Sir, has that been so made out? You have had witnesses at your bar of different sorts and in different stations: from which of those classes of witnesses is it, that this committee will take up the idea of a fit constitution to be given to that country? Will not its civil constitution necessarily be best understood by those to whom, professionally and officially, that subject individually belongs? I was not at all surprised to learn from the governor, that at the period of his arrival in the province, he found the inhabitants very much indisposed to the English government; very much indisposed to the English system of laws. If what the honourable gentleman says be true, nothing can be more natural, than that such characters entrusted with the administration of the laws should become obnoxious to the people. When they see ignorant, foolish, and low men placed on the seat of justice, it is very natural that the ridicule thereby excited should be transferred to the laws they were sent out to administer; but, that such is no longer the condition of the province, we learn from the concurrent testimony of two individuals, than whom no men were ever better qualified to fill the situations to which they were appointed. Sir, it was natural that that should

happen which, from their evidence, is proved did happen. Both those gentlemen have told you, that in proportion as the knowledge of the English constitution increased, in that proportion were the inhabitants of the province satisfied with it. The first witness, Mr. Maseres, declared himself of opinion, that with some alteration, the Canadians, so far from objecting to, would be desirous of embracing that constitution; and further, with regard to the characteristic which distinguishes the laws of this country from those of any other on the face of the globe—the trial by jury—he expressed his conviction, that they would readily adopt that mode of trial; and the other learned gentlemen, Mr. Hey, confirmed all this, as far as his situation, as chief-justice of the supreme court, enabled him to confirm it. But supposing, Sir, that the Canadians were as adverse, as they have been proved to be favourable to, the trial by jury, is the committee prepared to maintain, that we ought to indulge them in their prejudices? That the constitution of a colony ought not, as nearly as possible, to be the constitution of the mother country? Had the prejudices of the people of Ireland been given way to, would not that country be still subject to the Brehon law? Does any gentleman wish that this should be the condition of that country? With regard to that inestimable right of Englishmen, the *habeas corpus*, I should be glad to know, whether it is the intention of government to introduce into the bill a clause in favour of it.

Lord Clare.—The learned gentleman has asked, whether there is an Irishman who wishes to have the Brehon law revived in that country? I, Sir, am a descendant of some of those who voted for the introduction of the English laws. But, how were they introduced? By an act of parliament. And is that any reason why we should impose the laws of this country upon a people who do not understand them? You make those people free, to whom you give the form of government they best like. It is natural for men to be wedded to those laws and customs in which they have been brought up. Could a Canadian be satisfied with the deci-

sion of a cause, not one of the reasons of which decision he understands? There are several species of arbitrary government; they all differ in degrees: but there never was a species of arbitrary government so tyrannical as that which goes to give to a people laws which they do not understand. So arbitrary a species of government never did exist, and God forbid a British parliament should first give birth to such a monster!

Mr. *Edmund Burke*.—I have very little to say to this clause: perhaps I should have nothing to say to it, except that it is a violation of the faith of Great Britain held out to the Canadians; that it is a violation of a promise to give them the benefit of the laws of England. It does not give to Canada the benefit of an English assembly, an English jury, or any of the valuable laws of England, except only the criminal law, which is a restraint of the benefit. In that case, I humbly conceive the faith of the Crown of England and of the parliament of England, to be directly violated. I agree with the learned gentleman—if ever I disagree with the learned gentleman it is with fear and trembling; I shall always stand up with great confidence against anything which he opposes—that there is a great difference between making the laws of England the basis of the Canadian constitution, and assuming the old law of France as that basis. But I am not unwilling to intermit some part of the English laws, so far as they interfere with the habits of the Canadians. I always consider the Canadians, Sir, as the first object of my attention; no doubt the English subjects ought to be the second object. They ought, indeed, to be a great object of attention; while every security to their liberty should be established. I would have English liberty carried into the French colonies, but I would not have French slavery brought into the English colonies. The clause goes to deprive the subjects of Canada of the benefit of the proclamation; it goes also to deprive the English subject of the benefit of the laws of England, while he is residing in a place under the protection of the laws of Great Britain.—

Now, Sir, having said this, I avoid entering into a detail of the particulars, because they are the subjects of other clauses. I say, in general, that the repeal of this proclamation does to the Englishman a great wrong, and carries away from him the benefit of the laws of England; which ought to attend him as constantly as the shadow, which "proves the substance true." But you take from him the laws of England, and present him only with a shadow in their stead. We do not know that the evidence on this point is satisfactory: it appears to me rather to support a contrary conclusion. It is not proved that the laws of England are not approved of by the people of that country. With regard to this whole clause, it appears to me a violation of the proclamation—to the French, a denial of a promise; to the Englishman, a denial of law. I shall state, at the proper time, what, in my opinion, is fitting to be established in its place.

Mr. Howard.<sup>(1)</sup>—I should have been content to give upon this, as upon most occasions, a silent vote, if I did not think myself indispensibly called upon, while I possess the gift of utterance, to bear my testimony against this most tyrannical proposition—a proposition calculated to introduce tyranny and oppression into the colony, expressly contrary to the terms of the proclamation. It has been said, that this clause is necessary. To this I answer, that the assertion is false; that the contrary has been proved by Mr. Maseres. What, Sir, can possibly be the object of such a proceeding, but some design, some dark scheme, to introduce slavery and oppression into the colonies? If the existing law be found inconvenient or partial, let us alter or amend it, and then make it perpetual. I have hitherto looked upon this House as the barrier between the prerogative of the Crown and the liberty of the subject. I now find the barrier is to be taken away; that the trial by jury, the great bulwark of the constitution, is to be broken down;

(<sup>1</sup>) The hon. Thomas Howard, second son of the Earl of Suffolk and Berkshire. In 1779, by the decease of his grand-nephew, he succeeded to the earldom. He died in 1783.

that there is to be no *habeas corpus*; but that, in the room of it, French *lettres de cachet* are to be established; and that arbitrary governors are to be suffered to dispose of them as they may think proper. Now, I will say, that any minister who should advise his Majesty to pass a bill, the effect of which is to take away the trial by jury, would not hesitate to advise him to issue *lettres de cachet*, or anything else. Sir, it has been said, that the number of English inhabitants is few, as compared with the Canadians; and that the former, only about three hundred and sixty in number, consist of the lowest disbanded soldiers and poor traders. But why is their fate to be involved in that of the greater number? And why are both to be involved in this scheme of French government? Now, Sir, as to these disbanded soldiers, I think they had far better have continued under the arbitrary government of martial law, than, being disbanded, become members of this community under the French law. And this is the reward held out to them, for the blood they have shed in the cause of their country! This is the encouragement given to others to tread in their footsteps! I could go much further, but shall content myself with saying, that I am entirely opposed to this clause.

*The Attorney General.*—Some of the gentlemen opposite have confined themselves to that which is the regular order of the proceeding, giving an opinion upon the clause; others have advanced beyond that point, and discussed the whole of the bill. They are very industrious to inform you, that they apply themselves to the subject of the civil law, and they talk about depriving the people of trial by jury and the *habeas corpus*. While they are doing that, I hold it to be totally impossible for any man who wishes to discuss the bill in an orderly manner, or to express himself in an intelligible manner, to enter into the debate.

*Captain Phipps.*—If I understand the professed object of the bill, this clause is inapplicable: if it has any other, I wish gentlemen in the secret would avow that object; but



let us not, under the colour of one object, endeavour to procure others. From the evidence I have heard, I cannot conscientiously give my vote for declaring the civil government of this country inapplicable to Canada.

The question being put, that this clause stand part of the bill, the committee divided :—Ayes, 91 ; Noes, 81. The noes went forth.<sup>(1)</sup> The following clause was then read :—

“ And, for the more perfect security and ease of the minds of the inhabitants of the said province, it is hereby declared that his Majesty’s subjects, professing the religion of the church of Rome, of and in the said province of Quebec, may have, hold, and enjoy, the free exercise of the religion of the church of Rome, subject to the King’s supremacy, declared and established by an act made in the first year of the reign of Queen Elizabeth, over all the dominions and countries which then did or thereafter shall belong to the Imperial Crown of this realm ; and that the clergy of the said church may hold, secure, and enjoy, their accustomed dues and rights with respect to such persons only as shall profess the said religion.”

To this clause Lord North proposed to add these words :—

“ Provided, nevertheless, that it shall be lawful for his Majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant clergy within the said province, as he or they shall, from time to time, think necessary or expedient.”

Lord North.—I do not know that it is necessary to insert this proviso, in order to enable the King hereafter to support the Protestants of Canada, in case they should become entitled to have their clergy provided for by the tithe, &c. ; but I apprehend that intention is more clearly expressed in the words I have proposed.

Mr. *Edmund Burke*.—I am not a little hurt, that the evils of arbitrary power are to be corrected by the insertion

<sup>(1)</sup> “ I voted for the clause, as I considered it more conducive to the happiness of the Canadians.”—H. C.

of other acts of arbitrary power. It seems to be asserted, that the holders of these institutions hold them not by act of parliament, but at the King's pleasure. In fact, every body is made to depend upon the King's pleasure. It leaves the possession of tithe not fixed agreeably to any certain rule, but dispossessable at the King's pleasure. This is in no way necessary. We find the King's pleasure twisting itself about every fibre of this bill. If the power of appointing Protestant ministers were granted to the Society for propagating the Gospel in foreign parts, it must be an act of public notoriety, an act of record, that enables them to go and examine what the tithes are. By this means, they would not only be provided for, but ten thousand times better provided for. Yet all is to be sacrificed to that beautiful idol, the King's pleasure! I want as much of law as you please, and as little of the King's pleasure as possible. This act gives to his Majesty a power to appoint. Does it restrain him from taking away, when, where, or how much, he pleases? Does it not give him power to rob the Popish clergy, without giving any advantage to the Protestant clergy? I hope it will become a fund directly for the support of the Protestant clergy. Never will I give a vote for abolishing all religion; for tithe is the large premium upon religion. Some Protestant clergy are wanted immediately, because there are some Protestant inhabitants. Let the law be the golden rule, that establishes religion for the Frenchman, or gives it to the Englishman. I want a legal provision, not an arbitrary provision. Let those who have the tithes, and those who get them, have them and get them by law. Taxes unapplied are not taxes. The clause might seem to give the King a power of taxing; but every thing that gives the power, gives the means. I will move an addition, which shall give the power of taxing to parliament, as an amendment.

Lord *North*.—It is a matter of little consequence. I will withdraw the amendment.

Mr. *Edmund Burke*.—Does the noble lord mean to say,

that he wishes the clause to stand, without any amendment?

Lord *North*.—I conceived the amendment I had proposed would have obviated the objections which some gentlemen had to it.

Mr. *Edmund Burke*.—Then, as that clause stands, there is a direct premium given for atheism. I shall move an amendment, that no new taxes be laid upon the colony without the consent of parliament, and I shall propose, that the tithe of the Protestants be paid to some Protestant ministers established in the country.

Mr. *Charles Fox*.—The noble lord's amendment seems to me to give a power to the King of taking away the dues of the Roman Catholic clergy, and giving them to the Protestants. I think, if it is proper to establish the Roman Catholic religion, that parliament should do it; and that it should not be in the power of his Majesty's ministers to excite individuals to establish a religion contrary to the opinion of the majority of the people in it.

The *Solicitor General*.—I will state in a few words the intention of the proviso, with respect to the establishment of a provision for the clergy in Canada. First, I agree that the Roman Catholic religion ought to be the established religion of that country, in its present state; the clergymen of which are paid by the landed revenue of that country. I do not mean to assert, that this should be perpetually the state of Canada; or that we are by law to enact that the people are not to be converted; or that the tithe shall remain in the Popish clergy; or that the tithe shall sink. I would not hold out the temptation, that if you are a convert you shall not pay tithe. If the majority of a parish are Popish, there ought to be a Popish clergy in that parish; that Popish clergy ought to be maintained by such as are Papists; but the money of the Protestants ought to be applied for the encouragement of Protestants, and for the maintenance of Protestant clergy. In proportion as the scale, with regard to numbers, shall turn to the Protestant side, the clergymen

ought to be Protestant. The amendment points rather more definitely to this object than the clause. There is no harm in leaving the discretion open. I would leave it so large, that if they were to be converted to the Protestant religion; I should hold it to be absolutely necessary to adopt the mode of Protestant worship; and then all tithe should be paid by Popish inhabitants and others to the Protestant clergy. The bill waits events.

Mr. *Charles Fox*.—I perfectly agree, that no Protestant ought to pay tithe to the Romish clergy. That is provided for in the clause. It could not be better stated for that purpose. But the learned gentleman has not absolutely said how far this proviso goes. The noble lord's amendment points to a more definite purpose. Am I to understand the tithe to be absolute, so that you are not to alter it; and that it is contemplated to give to his Majesty the power of applying that tithe to the support of which clergy he pleases?

The *Solicitor General*.—Though I wish to tolerate the Popish religion, I do not wish to encourage it. When we tell the Roman Catholics of Canada, that we will not oppress them, we, at the same time, tell the followers of the church of England, that whenever their faith shall prevail, it will have a right to its establishment. As soon as the majority of a parish shall be Protestant inhabitants, then I think the ministers of the Crown are bound to make the minister of that parish a Protestant clergyman; then, I think, it could not be felt by any man an act of injustice to say, that the whole revenue of that parish shall be paid to the Protestant clergyman.

Lord *North*.—Sir, as you have pointed to me, I presume to offer my sentiments, to explain the views I had when I made this amendment. I was in hopes of meeting the objections which had been made against the bill as it stood before. Those objections are two; one, that no care was taken of the Protestant clergy; that no establishment had been thought of for them; that, in the course of this bill, we had not only tolerated, but established the Roman Catholic religion;

and that nothing had been thought of for the Protestant clergy. I am persuaded, in the present state of that country, the Protestant religion does not call much for support ; but the hope of greater encouragement should be held out to it. A small establishment, however, will be sufficient at present. The question then is asked, what is to become of the tithe which will be paid to the Protestant clergy at a future period ? Are the people, in the mean time, to pay no tithe ? And do you hold out to persons, that they may, for the sake of saving the tithe, disclaim the Roman Catholic religion, and not embrace any other ? I thought, by the alteration of this clause, that both those questions would be answered ; and I proposed it, by way of pointing out the method in which the tithe, which would otherwise be paid by the Protestants to the Popish clergy, should be applied by the King to the Protestant clergy. The words I offered would, I thought, have answered that purpose. If gentlemen do not approve of them—I proposed them to remove particular objections, but if they encounter greater objections—I shall withdraw them. I will read my amendment : —“The King will not be able to raise any tithe not now payable ; but may dispose of that which is payable.” There will be an extent of power given to the King, in that circumstance.

Mr. *Dunning*.—My opinion of religious toleration goes to all who stand in need of it, in all parts of the globe. It is a natural right of mankind, that men should judge for themselves, and offer up to the Creator that worship which they conceive likely to be most acceptable to Him. It is neither competent, wise, nor just for society to restrain them, further than is necessary. I should think the Roman Catholics would consider themselves well treated, if they were put in the same situation the Protestant subjects are put in by this bill : at least, the preference ought not to be given against them. I am anxious to know from the learned gentleman, what the extent is understood to be of those laws, which we are going, by this bill, to give to the

Catholic church. Will they include all ranks now in that province? Will it include the bishop? I should be glad to know how he came there; what power he has there; from whom he derives that power; whether by papal authority, or whether by royal authority? In my apprehension, these questions deserve a serious answer. The dues and tithes, whatever they are, which may belong to this bishop, and which he has thought fit to appropriate to himself by his own authority, will go to his successor to the end of time, without any interposition of royal authority. Whether the bishop has exercised the power of nomination, I do not know. Upon that fact I wish to be informed. Is it the intention of ministers that he shall, for the future, name to vacant churches, or that the King shall so name? If they think that the King only should name thereto, they will take care not blindly to give the power to the bishop; nor will they give him the power of suspension; if they are, as they ought to be, ministers of peace, anxious to promote goodwill, and good fellowship among men. To establish, in the judgment of the learned gentleman, is not to encourage: in my judgment, it is to encourage; and especially if this is to be the predominant religion. I do not like domineering in religion. I do not think the religion of the many ought to be the religion of the few. According to my apprehension, those few have as good a right to judge for themselves, as those many. Every man has a right to pursue his own opinion: no man ought to be permitted to control that of another.

*Mr. Stanley.*—There is no inconvenience in supposing two religions established in the same country. For example, the establishment of the Roman Catholic religion has by no means excluded the Protestant.

*Mr. Thomas Townshend, jun.*—I want to see some specific provision immediately made in Canada for the Protestant religion. I was concerned to hear that, nine or ten years ago, there was not a single place of worship for the Protestant; which I consider to have been a great disgrace to the English

governor. I was surprised at an expression dropped by the noble lord, "that the Protestant religion in Canada at present was hardly an object worthy of consideration." During the whole of these discussions pains have been taken by the prime minister of this country, and chancellor of the university of Oxford, to rank the Protestants in Canada as low as possible, in number, consequence, and character.

Lord *North*.—The honourable gentleman is word catching. I certainly did say, that the Protestant inhabitants were so few, that they were hardly worthy of attention; but I explained it at the time. What I meant was, that they were not sufficiently numerous at present to make it necessary for the legislature to provide establishments and a revenue for them. With regard to the bishop, it is my opinion—an opinion founded in law—that if a Roman Catholic bishop is professedly subject to the King's supremacy, under the act of Queen Elizabeth, none of those powers can be exercised from which dangers are to be apprehended.

Mr. *Edmund Burke*.—The noble lord says, he makes the proposition contained in the amendment, in order to make the clause palatable; but if not liked, he has no objection to withdraw that amendment. Are they, then, mere nugatory words, since they are withdrawn with such extreme levity? Then I promise mine as a better candidate for the consideration of the committee. But before I proceed, allow me to state, in a few words, my opinion with regard to the principle of toleration. There is but one healing, Catholic principle of toleration which ought to find favour in this House. It is wanted, not only in our colonies, but here. The thirsty earth of our own country is gasping and gaping, and crying out for that healing shower from heaven. The noble lord has told you of the right of those people by the treaty; but I consider the right of conquest so little, and the right of human nature so much, that the former has very little consideration with me. I look upon

the people of Canada as coming, by the dispensation of God, under the British government. I would have us govern it, in the same manner as the all-wise disposition of Providence would govern it. We know He suffers the sun to shine upon the righteous and unrighteous; and we ought to suffer all classes, without distinction, to enjoy equally the right of worshipping God, according to the light He has been pleased to give them. The word "established" has been made use of: it is not only a crime, but something unnatural to establish a religion, the tenets of which you do not believe. Applying it to the ancient inhabitants of Canada, how does the question stand? It stands thus:—you have got a people professing the Roman Catholic religion, and in possession of a maintenance, legally appropriated to its clergy. Will you deprive them of that? Now, that is not a question of "establishment:" the establishment was not made by you; it existed before the treaty; it took nothing from the treaty; no legislature has a right to take it away; no governor has a right to suspend it. This principle is confirmed by the usage of every civilized nation of Europe. In all our conquered colonies, the established religion was confirmed to them; by which I understand, that religion should receive the protection of the state in those colonies; and I should not consider that it had received such protection, if their clergy were not protected. I do say, that a Protestant clergyman going into that country does not receive the protection of the laws, if he is not allowed to worship God according to his own creed. Is this removing the sacred land-mark? What I desire is, that every one should contribute towards the maintenance of the religion he professes; and if this is proper to be done, why not do it immediately? The religion to be established should be that approved religion which we call the religion of the church of England. With regard to the religion of our own country, there would be propriety in the use of the word "established;" but I maintain, that every one ought to contribute to the support of some religion or other? Does any gentle-



man mean to say, that the impious profligate, the moment he chooses to avow himself an unbeliever, can appropriate to his own use the tithe he has been accustomed to pay for the support of any religious establishment? Suppose one of those persons should turn Jew—I would give him complete toleration, but I say, let him support the synagogue. I will suppose this case: when a man is sued for his tithe, he will declare that he does not profess the Roman Catholic religion. He then walks directly into that mass-house, or church, for the support of which he has positively refused to engage himself: he says, he does not profess the Popish religion; and suppose he abstracts himself from all religion, he pays no tithe. If this be allowed, you are encouraging him to be an atheist. Therefore, this clause does not provide for the establishment of popery, but it does provide for the establishment of atheism. I have not yet heard a shadow of an answer to this charge; nor the slightest attempt made to remedy this evil. With a view of meeting it, I shall propose a clause, providing that the tithe paid by persons not professing the Roman Catholic religion shall be handed over to the Society for the Propagation of the Gospel. What objection can be made to my proposition I cannot conjecture. Does it trench on the rights of Englishmen? Does it trench on the rights of the ancient inhabitants of Canada? By no means. When the people become divided in their religion, why not follow the generous example set by the treaty of Westphalia; by which the duties of two or three establishments were discharged in the same church on the same day; the Roman Catholic, the Lutheran, and the reformed religion? It sets an example worthy of a Christian church. It is a happy union, that has fixed peace for ever in those provinces.

*The Attorney General.*—The present question turns upon the merits of two propositions. The one moved by the noble lord stands in a very small compass—"let those inhabitants who profess the Popish religion continue under the obligation of paying tithes for the maintenance of the Popish

clergy." But as there are a certain number of persons in the province who do not profess the Popish religion, some regulation ought to be entered into with regard to their tithe. The noble lord proposes a clause referring it to the King, to appoint the payment of their tithe, in such course and order, as his Majesty's wisdom shall suggest, for the support of the Protestant clergy. Another plan which has been proposed is, that instead of the tithes of the Protestants being paid as circumstances may require, they shall all be paid to the receiver-general. They are not even then to be disposed of, even by his Majesty, as the exigency requires, but to be paid to the Society for the Propagation of the Gospel in foreign parts: so that, instead of the disposal of the tithe being committed to the King, we are called upon to declare by our vote, that it is a fitter thing to place greater confidence in the wisdom and discretion of a religious corporation. I should never have thought of referring this to the opinion of the House. I have no difficulty in saying, that the first proposition is infinitely the better of the two.

Mr. *Edmund Burke*.—If the amendment of the noble lord should be carried, I shall propose a clause to make it compulsory upon the Crown to maintain Protestant ministers in Canada, and to appropriate whatever tithes may be received to that purpose.

Governor *Johnstone*.—As I do not agree with the one amendment or the other, I wish to state my objections to both the amendments together, and to the clause proposed.

The *Attorney-General*, interrupting him, begged to know, whether the amendment the honourable governor was about to propose would not come on better afterwards, as a question upon the clause.

Governor *Johnstone*.—I am exceedingly obliged to my learned friend for admonishing me, in point of order. He hardly knew whether I was about to propose any amendment. He probably judged that I was incapable of proposing any, under such a clause. As I shall state my argu-

ments afterwards, I shall forbear saying any thing more at present.

Mr. *Pulteney*.—Giving tithe perpetually will hurt agriculture. It is in evidence, that there is a tithe established—the twenty-sixth part.

The *Attorney-General*.—That clause which establishes the legislative authority gives authority to every extent; but with respect to the ordinances concerning religion, it requires them to be transmitted here. The clause, therefore, seems not to require that alteration.

Governor *Johnstone*.—I apprehend that when the legislature, by the bill, has prescribed what shall take place, the legislative power can alter that establishment. It comes to that great question—Whether the delegated authority is not answerable to the power that delegated it? They never can make an act of parliament contrary to the parliament of Great Britain. [The House cried out, no!]

Lord *John Cavendish*.—What is to become of the money in the interval, before the establishment of the Protestant clergy? This clause prevents the King from applying it to other purposes. It must lie somewhere, till an opportunity offers for its employment.

Mr. *William Burke*.—I understand the clause to mean, that the King might employ it for that purpose, but that he was not bound to do so. Words ought to be introduced, which would bind the King so to apply it.

Mr. *Edmund Burke*.—I presume the King is not bound. Of the four-and-a-half per cent duties, given for the purpose of defending these colonies, not one shilling has been expended for that purpose. The Crown has otherwise appropriated the whole of that money.

The amendment of Lord North was carried without a division.

Governor *Johnstone*.—One part of the clause refers to the act of Queen Elizabeth respecting the oath of supremacy. Now, I wish to ask, are not the Roman Catholics obliged to take an oath? Will they not take an oath? But, by the

bill, you leave them subject to persecution, at the will of the Crown. Do you wish the Roman Catholics to become Protestants? The best way to effect it would have been to relieve them from tithe; but now you have entailed it upon them, you will, I am afraid, make very few proselytes.

Colonel *Barré*. — I wish to put a few questions to the noble lord. I wish to ask him, whether the bishop had the power of exercising an interdict or not? The noble lord thought not. Now, does this bill take it away? I understand he has exercised that very power lately. Are you content to leave that religion in the situation in which you found it, if it has a power of persecuting other religions? I wish to know also, whether the Roman Catholic inhabitants will be permitted to bear arms?—whether a Canadian can become a private soldier?—whether, in becoming a private soldier, he is excused from signing the declaration which a private soldier of this country is compelled to sign?—whether any Canadian inhabitant can hold a military employment under the governor?—and, if he can hold such employment, whether he is obliged to take the oath of supremacy and abjuration, and sign the declaration? I ask these questions, that we may not move blindfold in this matter; that we may know what will be the operation of the bill in that country.

Lord *North*. — These are questions that would be put with more propriety to my learned friends, the attorney and solicitor general. The bill, I apprehend, leaves the inhabitants in possession of all the privileges they before enjoyed. Officers and soldiers in Canada may serve without taking the oath.

Mr. *Edmund Burke*. — I understand the oath of supremacy will be repealed, and another substituted in the place of it.

Colonel *Barré*. — The noble lord refers me to the attorney and solicitor general. I waited to see whether they would rise; but as I see they are not disposed to do so, I must make a few remarks on what the noble lord has said, by way

of answer to me. He tells us, that men serving in the army in Canada, are not liable to the pains and penalties of *pre-munire*, to which the same persons would be liable in Europe. Sir, I should be sorry if they were. He says, that Roman Catholics are, by this bill, left in possession of the same rights they enjoyed previous to the conquest of Canada. Now, I know of no rights they enjoyed previous to the conquest, but such as were held at the pleasure of the King of France. My question is, whether they can now serve the King of England, as officers and private soldiers, without taking the oaths, &c. ?

Lord *North*.—I said, that, by the passing of this bill, they would be enabled to do so.

Mr. *William Burke*.—Has not the King the power of ordering the army to any part of his dominions ? May not the officers of Canada be ordered to this country ? It is in the power of the Crown to have an army of Roman Catholics here.

Mr. *Baker*.—The difficulties thicken so amazingly, that it is almost impossible to go on with the bill ; and, unless we have an answer to these questions, it will be indecent to proceed with it.

Colonel *Barré*.—In the noble lord's answer I find something that strikes me with a more serious and deeper detestation of this bill than before. I suspected throughout, that there was some mischief in it, not avowed in the bill itself. A very extraordinary indulgence is given to the inhabitants of this province, and one calculated to gain the hearts and affections of these people. To this I cannot object, if it is to be applied to good purposes ; but if you are about to raise a Popish army to serve in the colonies—from this time, all hope of peace in America will be destroyed. The Americans will look on the Canadians as their task-masters, and, in the end, their executioners. I smelt this business out from the beginning. But, is it prudent to arm the Canadians, so long as you can keep them unarmed ? If you accustom them to arms, will they ever

get rid of their military spirit? Will they not look up to their own country? And will it not be worth the while of that country to cultivate this military spirit more and more? I wash my hands of this business. I here declare my solemn aversion to it. I know what you mean. *Liberavi animam meam!* I have foretold the thing. There is not a man in the government that means to deny it. But, if it be your plan—if it be part of your plan—throw it out here, and let it be discussed.

The *Attorney-General*.—The single question is, whether this clause should stand part of the bill? It amounts to no more than this—shall the inhabitants enjoy the free exercise of their religion; and shall their clergy have their accustomed dues and tithes? In the discussion upon this clause, or even in the discussion upon the general merits of the bill, how the future condition of Canadian soldiers and officers can be made a part of the argument, I cannot see. The question had rather be taken upon the debate on the mutiny bill.

Lord *Barrington*.—What the learned gentleman states is undoubtedly true. Whether the Canadians can or cannot be soldiers or officers has nothing to do with this clause. When not only this clause but the whole bill shall be passed, the Canadian, with regard to serving in the King's army, will, I apprehend, stand upon the footing he has ever done, since the conquest of the province. No Canadian was ever hindered from being a common soldier. He has only to take a short oath to be faithful to the King. It is the opinion of some of the ablest lawyers in this country, that a foreigner is capable of being a common soldier. Whether a Canadian can bear a commission in the King's army, I am not lawyer enough to know. I should be inclined to doubt whether the conquest has made him an English subject: but this bill gives no additional advantage with regard to that. No Canadian can serve as an officer, without taking all the oaths; so that there is every guard, after this bill is passed, that there was previously.

Colonel *Barré*.—The noble lord has removed the uneasiness I had, by saying that a Canadian must take the oaths. I am obliged to him for another piece of information—that the office of a soldier is not an office of trust. He says, that the only oath of a soldier is that described in the articles of war; but, is there not something else required in those articles—an attestation taken before a magistrate, the first sentence of which is, that the man avows himself to be a Protestant?

Lord *Barrington*.—I do not know whether there is such a clause or not. The office of a soldier is certainly an office of trust.

Mr. *Cavendish* asked Colonel *Barré*, how the Roman Catholics of Ireland proceeded, with regard to the attestation?

Colonel *Barré*.—They have so little scruple, that they always take it.

The question being put, the clause was agreed to. Mr. Baker then moved, that the Chairman report progress. On the question, that the Chairman do leave the chair, the Committee divided: Yeas, 31; Noes, 75. The next clause was read, enabling his Majesty's Canadian subjects to hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other civil rights, &c.; and that, in matters of controversy, relative to property and civil rights, resort should be had to the laws of Canada for the decision.

Mr. *Edmund Burke*.—The question under this clause is, whether we shall take away all the law of England, at six months or twelve months hence. I declare myself incapable of arguing the question. I have neither strength of body nor energy of mind, to proceed at this late hour.

He spoke warmly against going on with the debate, and left the House. Lord John Cavendish spoke to the same effect, and also went out. Mr. Cavendish spoke to the same purpose, but would not go out.

Mr. *Thomas Townshend*, jun. — The gentlemen oppo-

site, who are now sitting in sullen silence, as soon as they have obtained a kind of licence to proceed, by the absence of those honourable members who oppose them, will go further than people who talk upon the subject. I should be glad to know how far we are to go. I believe we have no instance upon the journals of the House, of business being treated in this manner. And why? Because the administration have been idle — have neglected their duty, and been guilty of criminal negligence. Looking at the volume of reports upon the table, I ask—where is Lord Palmerston?<sup>(1)</sup> Where are the members of that board of trade? Why have they gone from their opinions? Gentlemen who have signed their names to a report, should tell us why they now have differed from that report. Is this all to be passed over in sullen silence, and no answer to be given to any objection?

Colonel *Barré*. — I do not rise to express any warmth. A bill of greater magnitude never came before the House in such a shape as this bill. It passed the House of Lords without a single evidence in its favour. When it was sent down here, we obtained some evidence, but other documents were refused. The noble lord himself, with every appearance of candour, in the first stages, called for assistance in discussing. Sir, we have discussed till we are tired. Will anybody deny that the noble lord has not had help, even from those who, only as members of this House, were required to give it him? The request made by my honourable friend is a very proper one. If other gentlemen cannot draw an answer, I cannot draw one. I can only say, it would have been more in character to declare, that you shall pass this bill as the Lords have sent it, and not have any discussion upon it: that would have been the more manly conduct.

Mr. *Charles Fox*.—It is indeed indecent conduct; as it

(<sup>1</sup>) Henry Temple, second Viscount Palmerston, at this time one of the lords of the admiralty, and member for Southampton.



appeared to me, the other night, when ministers refused to call for General Murray. What was then said? "No precipitation is used in the passing of this bill; as much time is given to it as to any other." Whoever made this assertion has frankly broke his word, and will be as much respected as a man ought to be, who makes a promise and does not keep it. What single attempt has been made on our part to delay this bill? Has the same debate been gone over twice? They have not hinted that there has been any delay. Upon what ground does the bill now stand? Two or three clauses have been gone through. Are the rest not as material? Yes; but they should not be taken up at twelve o'clock at night. The boundary was settled in the House of Commons, without having anything fixed by those whose duty it was to have that boundary fixed. Was no boundary necessary, in their opinion, that they came unprepared?

Lord North.—As to the boundary, I, for one, was very well satisfied with it, as it stood in the bill. Several gentlemen, speaking for particular provinces, entreated that other boundaries might be taken; and there was that attention paid to their doubts, that, provided they would settle a good boundary, the friends of the bill were willing to give way: in my opinion, the first boundary ought to have satisfied every body. As for the clause before us, I am very much mistaken if it has not been fairly debated already; but I do not in the least object to have it debated again. I would submit it to any honourable gentleman, whether, after we have sat so long upon it,—after the clause has been so fairly debated—it is so very violent, so very precipitate, to proceed with it before the committee rises to-night. I am for proceeding at least through this clause before the committee breaks up.

The committee having gone on with the clauses, to the end of the criminal law clause, Lord North said, if any gentleman wished to adjourn, he had no objection. The Chairman was going on, but Mr. Charles Fox got up, and

desired the committee might adjourn; which it accordingly did. Lord North said to him, are we not very candid? I said, I generally was for adjourning at twelve o'clock.

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*Wednesday, June 8.*

The House having resolved itself into a committee of the whole House on the bill.<sup>(1)</sup>

Mr. *Edmund Burke* said—I should, Sir, have proposed some amendments to the bill last night, if my ideas had not been thought ridiculous, by the conduct of the committee, in proceeding with a most material part of the bill at twelve o'clock, when the natural constitutions of gentlemen were perfectly exhausted. When this bill was brought down to us, the general voice of almost every one who supported it was, that it was a very imperfect measure as it stood, and that, agreeably to the universal practice, it would be open to any amendment. Unfortunately, I was not here upon the second reading. When I came to town I was utterly unacquainted with the bill. I took it up with a determination to come here, not only with my mind unprejudiced, but with a determination to avoid everything that had any shadow of passion in it; and I appeal to the candour, the direct justice, of parliament, whether the clause fixing a boundary to such an extent of territory, or the clauses settling the laws and religion of such a province, could be well debated, upon the numberless momentous questions that arose, in less time than we have given to them. The privilege allowed in committees of the House of speaking more than once, is a privilege founded upon reason. An argument upon the principle of a measure may be dispatched in

(1) "About forty members were in the House at four o'clock."—H.C.

the House at one speaking, as well as at a thousand; but in the committee, where matters of detail are gone into, it is necessary to speak more than once. The noble lord, therefore, has no right to say that we have interposed any delay. The first part of the bill took us up two days—in my opinion, a very short time to spend upon such a subject. Fixing the geography, was the work of one day; fixing the religion, of another. These, and other delays, if they can be called delays, were absolutely necessary. The committee ought to take care, that no delays but necessary ones should be allowed in this business—but the necessary delay arising from a detail. Now, Sir, if an entertainment<sup>(1)</sup> should be given ten miles from London, and we were to adjourn over this day, and thereby make the business of the nation give way to such entertainment, what would be the opinion of the people? I do not censure the House for entering into the innocent gaieties of this life, provided they give time enough for the discharge of more important duties. If any youth, in the gallantry of his spirit, calls gentlemen to such an entertainment, I would not say, do not enjoy it; but go and enjoy it, if you have taken care, at the same time, to provide for the prosperity of your country. But, while I say this, I ask, that the same indulgence which is given to those who engage in scenes of joy and dissipation should be given to those who have need of rest to support their bodies to enable them to come here to discharge their duty. I for one complain, that I am precluded from doing my duty. I complain, on the part of the people of England, who have sent here five hundred and fifty-eight men to represent their interests, that they and I are cruelly, wickedly, and unjustly treated. I complain of it, and demand justice: that is, I demand a reparation of the wrong which has been done us. I have spoken strong words. Last night I spoke feebly; but now my voice is raised, my accusation is steady and

(<sup>1</sup>) Mr. Burke alludes to the grand fête champêtre given at the Oaks, in Surry, on the following day, on Lord Stanley's approaching marriage with Lady Betty Hamilton, only daughter of the Duke of Hamilton and Brandon.

resolute. I had several very material amendments to propose to the clauses. I had an equitable clause, with regard to revocation, &c. [He mentioned other alterations.] I wished to have provided a remedy for the objection, that causes were tried by persons not fit to be trusted. My opinion is, that the people of Canada, with regard to the civil law, have not expressed their dislike of the trial by jury. These are some of the matters that I would have stated ; but it would have been impossible to have debated them at that hour of the night. Having said this in defence of a conduct which may have been a little unjustifiable, I will add, that this headlong mode of proceeding will not tend to make this law go down with the people of England. They will certainly dislike it. America will dislike it. As I was not permitted to make these amendments before, I conclude I shall not be heard to-day.

Mr. *Cavendish* was sorry the honourable gentleman did not make the amendments he intended.

Lord *North*.—These amendments may still be made, by being thrown into the form of a clause. The honourable gentleman is not precluded from making, even in the committee, any alteration he proposes ; but as to the propositions themselves which he threw out, as far as I understand them, I shall certainly be against admitting them. We are not, at the present time, competent to enter into a detail of the necessity of those provisions for the constitution of Canada. All that the parliament of Great Britain can do is to lay down general rules ; to say, you shall proceed according to Canadian customs, or according to the English law. Every alteration which the circumstances of the country can admit of—every variation which the interest of the old subjects may require—all these circumstances will be more properly considered upon the other side of the water, where they may be regulated by special ordinances. It would be in vain, and more likely to occasion confusion, for the parliament of Great Britain to attempt to enter into the particular laws by detail ; to say,

this law you shall have, or you shall not have. The best way is to give them the Canadian customs, and to let them be altered as they ought to be altered. What is of infinite advantage, they will thus have the law that they understand. The laws and customs of Canada are the basis of the law that they understand. If any ordinances are made varying that law, they will be promulgated, and they will understand them. For these reasons, I shall certainly oppose any proposition for entering into a detail connected with the English criminal or the Canadian civil law; because I think that detail, these alterations, and those amendments which are necessary can only be entered into and settled with propriety by lawyers upon the spot. As to the proceedings of last night, I shall remain satisfied in the consciousness of the rectitude of my conduct: it is a very sufficient reward, and it is the only reward I shall be likely to have. Upon the whole, I will venture to say, that there never was a bill that has been more amply examined and debated than this has been. There are few bills that have remained so long in the House, as this has done: there have been few propositions, where there has not been a readiness in the friends of the bill, to accept any suggestions, from whatever quarter they might come. The honourable gentleman says, that we are to adjourn to-morrow for an entertainment, which he approves of as an entertainment; but he thinks, that as he left the House at twelve last night, it would be a disgrace to the House to adjourn over to-morrow. For my part, I do not desire to adjourn over to-morrow; but I see no reason why, upon Friday, we may not give this bill every attention. I accuse no person of designed delay; but, at the same time, no person can accuse me of having shut out any material amendments. Those amendments may be proposed now: many could not be proposed last night; and if they are not proposed in the committee, there are yet two stages when they may be proposed. I was accused of a sullen silence last night: perhaps I may be excused from expatiating upon a matter not really before us: but when

the House is taken up with what is not of importance to the bill, I trust that the candour of the House will excuse me, if I respect the time of the House more than the justification of myself from any personal charge.

Lord *John Cavendish*.—Though I never can find out from whence this bill came, and though nobody seems to avow it, there is evidently concurrence enough to carry it on.

Mr. *Thomas Townshend*, jun.—I must complain, Sir, of the slovenly manner in which the two clauses were carried through the committee. I will venture to say, that two-thirds of that majority never heard the debate. It consisted of those gentlemen who take their meals regularly, and who are now taking their dinners. They come in when they have dined, and are extremely clamorous, crying, go on ! go on ! I do not thank the noble lord for the candour of last night ; but I thank him for the candour of to-day, in chalking out a method of going on for the future. I likewise understand, that the House is to adjourn for a day, on account of a fête champêtre ; and, to be sure, the day that follows the ninth of June is a day more proper for a fête champêtre, than for a committee of the House of Commons to be sitting on so important a bill ! But, at the same time, I cannot but confess, that the noble lord has shewn an amazing degree of foresight in fixing, above all other days in the year, on the 10th of June, for finishing a bill which goes to establish Popery. For God's sake, Sir, let us come down with white roses in our hats ! A day more propitious for a bill of this complexion could not have been fixed on. On the report of the bill, I shall propose a clause for rendering it temporary, and if the noble lord will suffer it to pass, he never had at his levee a more humble suppliant for a boon for himself, than I am for the Canadians. This bill will make the Canadians the detestation of the English colonies.

Mr. *Dunning*.—The noble lord takes credit for his candour. His candour consists in giving five days to the con-

sideration of this bill; but five days are very little indeed for the mischief which this bill provides. I collect the noble lord meant to tell us this—that it is his intention to refer every thing, in future, to that legislative council, to whom these Canadians are to be referred, but that it is far from his intention to introduce trial by jury. Is that his candour? Is that the concession for which we are not precluded thanking him? Thank ye, for nothing, would be a true description of the thanks that are due for this concession: but unless it be the pleasure of the creatures created by this bill, to counteract the pleasure of their Creator, can it be expected this blessing will be produced? Will they counteract all the purposes of the bill—all the pleasures of those who made the bill? And is not, then, the question concluded, as far as the committee have to do with it? In point of form, it will be competent for the House to reject the provision, and the bill itself containing the provision; but that this ought to be done, goes a very little way, in my opinion, to cause it to be done. My expectations are not better founded upon the future pleasure of the House, than on the future legislative council.

Colonel *Barré*.—This bill, Sir, originated with the House of Lords. It is Popish from the beginning to the end. The Lords are the Romish priests, who will give his Majesty absolution for breaking his promise given in the proclamation of 1763. In this bill they have done like all other priests—not considered separately the crimes with which the bill abounded, but have bundled them all up together, and, for dispatch, given absolution for the whole at once. When, however, the measure came down to this House, its members, not being so Popishly inclined, wished to have some information. They asked for papers: all the papers they asked for were not granted. They asked for evidence: all the evidence was not granted. The first man who governed the colony you would not hear, though I stated the reasons why he ought to be called. The chief justice and the attorney-general of Canada were both ex-

amined ; and their testimony goes in the teeth of this bill. Thus it is decidedly opposite to the opinion of two of the most respectable men in the kingdom. When the noble lord was asked for the papers containing these opinions, he refused to give them, alleging that the reports are very long : but the attorney and solicitor-general are both in this House, and I wish to hear the abstract of their opinions given by themselves. This they could have done, but the House would not let them. The advocate-general was called to the bar, upon which they said, we meant to create delay. The witness is so singular a man, that I cannot persuade myself to be out of temper with him. He was mounted very high, and pranced and pranced, and never moved from the place. I noticed a few expressions not becoming him as a witness at the bar, but altogether singular from a man who tells you, he had not memory to relate any thing he had written, and is at the same time known to be of so singular a memory, that, without the help of notes, he can sum up the largest train of evidence, not thinking it worth while to take it down upon paper. Some time ago we were given to understand, that we were not to expect a general election : the report now runs, that parliament is immediately to be dissolved ; and, in truth, Sir, after the passing of this bill, the sooner it is dissolved the better ! In its infancy it was a very compliant one, and humoured the ministry in what I thought a strong measure. I mean the Middlesex election. It continued to do so up to the middle of its existence ; and, upon its dissolution, people may say, as they did after the death of King Charles, that, by some papers found after its decease, there is great reason to suspect that it died in the profession of the Roman Catholic religion.

*Mr. Edmund Burke.*—There is one favour I admit to have received from the noble lord. He has assured me, that I may propose those clauses of which I have spoken, but that when they are proposed he will certainly reject them. I think the noble lord does deserve my warmest acknowledg-



ments. That is a kind of favour which is paid immediately on the receipt. Most assuredly I never will propose them.

Mr. *Jenkinson*.<sup>(1)</sup>—The honourable colonel tells us, that this parliament is a Roman Catholic parliament, and very near its end. I have always understood, that when a Catholic is dying, he is generally attended by a number of troublesome people, disposed to put many troublesome questions to him. Now, I hope that Catholic practice will not be followed in our case, but that he will, at least, allow us to die in quiet.

After some further conversation, the Chairman read the following clause:—

“ That it shall and may be lawful for his Majesty, his heirs and successors, by warrant under his or their signet, or sign manual, and with the advice of the privy council, to constitute and appoint a council, to consist of such persons resident there, not exceeding twenty-three nor less than seventeen, as his Majesty, his heirs and successors, shall be pleased to appoint; and upon the death, removal, or absence of any of the members of the said council, in like manner to constitute and appoint such and so many other person or persons as shall be necessary to supply the vacancy or vacancies, which council, so appointed or nominated, or the major part thereof, shall have full power and authority to make ordinances for the peace, welfare, and good government of the said province, with the consent of his Majesty’s governor, or commander-in-chief, for the time being.”

Mr. *Dempster*.—I do not see the use of making this council consist of a fluctuating number. With great submission, I would throw out, that the number is rather small, and that it had better consist of thirty than seventeen. I would

(<sup>1</sup>) Charles Jenkinson, Esq., at this time vice-treasurer of Ireland, and a member of the privy council. In 1786, he was raised to the peerage by the title of Baron Hawkesbury, and, in 1796, advanced to be Earl of Liverpool. He died in 1808.

further submit, whether it is not necessary to describe from what body of men this council should be selected—that it shall consist of members of the different religions of the old and new subjects. I would also suggest to the noble lord, the necessity of enacting a quorum; say fifteen of the thirty, or twelve, if the number is to remain twenty-three.

Lord *North*.—As to the last objection, I apprehend there is now a quorum established by the bill, which says, that “the major part shall,” &c.; therefore, there must be a majority of seventeen. It is intended that part shall be Canadians, and that the majority shall be Protestants; but it is difficult to know what number of Canadians you can admit. The behaviour of the Canadians has been, hitherto, unexceptionable, and there is no reason to doubt of their fidelity in general; but they are Roman Catholics. They have been old and attached subjects of the Crown of France, and have had some reason to regret the change. It will, therefore, be necessary to be cautious in the choice, that none may be chosen, but those on whose good character and fidelity you can rely. It will be difficult to say how many come within that description.

Mr. *Dempster*.—The reasons of the noble lord would have their weight with me, provided I could have a certainty that this was only to be a temporary law. If we do not give a qualification to the council, some of the worst characters in the country will get into it—men who will shew a ready compliance to the will of the governor; and thus you will have a despotism of the worst sort. If the council were to consist of gentlemen of property in that country, their own fortunes would go far to assure the colony of their making none but such laws as are necessary for its good government.

Captain *Phipps*.—The clause states, that “it is at present inexpedient to call an assembly.” Now, I wish to know why some reservation is not made of the King’s power to appoint an assembly, or why the measure is not made temporary. I speak constitutionally. I speak as a member of

the House of Commons, when I say it is with great caution this House, acting legislatively, ought to concur with the other House, to take the power out of the hands of the people, and vest it in the Crown.

Governor *Johnstone*.— I should not object to the clause, if the bill was a temporary one. The English colonies have flourished more than others; they have found out the secret of carrying freedom to the distant parts of the empire. I hope gentlemen will not come to the conclusion, because certain assemblies in America have recently been tumultuous on a nice point, that therefore all assemblies are to be discountenanced. I know the meeting an assembly is more dreadful to evil doers, than meeting the House of Commons. I know that without an assembly, it is impossible to carry on the various concerns of the country. My difficulty lies here. I think you should make the individuals composing that legislative authority feel that they have some rights. To induce them to give their voice faithfully, and without fear and terror, they must hold some rights in the place they possess. The tyranny of a number is greater than the tyranny of a few. If there were no House of Commons, does any gentleman believe that the King and the House of Lords would not be more tyrannical than the King alone? We see it daily. A multitude will do things, which a single person through shame would not dare to perform. I see throughout the whole, that the interest of the governor, and the interest of the receiver-general, are the predominant features of the bill; together with surrounding our own colonies with a line of despotism. As an Irishman said to me, in that nice metaphorical language that belongs to his country, you are coming round and round, till, like water flowing in upon an island, encroaching upon it more and more, you will not leave a foot of ground for the fowl of the air to rest upon. I fear you will not leave a foot for liberty to rest upon.

Lord *Beauchamp*.— This clause has been objected to, as if the proposed legislative council were to become the

mere creature of power, dependant upon the governor. Now, I apprehend the bill has guarded against any such inconvenience, as much as it possibly could do. All appointments must be made by the King in council, and the removals must be effected in the same manner. The honourable gentleman says, that the inexpediency of calling an assembly has not been proved; and he afterwards took occasion to observe, that the establishment of a popular assembly in Canada was objected to in this House, in consequence of our unhappy dispute with America; but I think no member has advocated the appointment of this legislative council on that ground, or ventured to say, that it will always be inexpedient to give the province an assembly: no man can foresee what changes will happen in that province; but I am in hopes that there are such events in the womb of time, as may make that plan of government admissible. But, though I throw out a wish that this bill may, in reality, be a temporary measure, if a clause to that effect should be proposed, I shall feel it my duty to object to it.

Captain *Phipps*.—The noble lord says, you are not to hold out a permanent government. In another sentence he says, that the House of Lords is against allowing an assembly, and that if it be allowed, it should be done by the whole legislature. I say, a great principle of aristocracy prevails in that House; that it is always an enemy to the communication of a free assembly to any people. I say, that this legislative council should prevail, till his Majesty sees it convenient to establish an assembly.

Mr. *Pulteney*.<sup>(1)</sup>—An assembly might do a great deal of good, and could not do much mischief. With regard to the qualification, the right of electing might be given to such as had property. I am not aware that the assemblies in

<sup>(1)</sup> Second son of Sir James Johnstone of Westerhall, and brother of Governor Johnstone. Having married Miss Pulteney, neice of the Earl of Bath, he changed his name, in 1767, by sign manual, to Pulteney. By the death of his elder brother, in 1797, he became inheritor of the baronetcy; and died in 1805.

America have done any mischief, except in being adverse to the power we assume over them of taxing them. We have no power superior to the people, which can act for them. I do not see why the Canadians should not be indulged with an assembly immediately. The power of electing annually is so complete a check, that I am persuaded they would be satisfied with that alone. In the island of Granada, the exclusion of Roman Catholics from voting at elections created great discontent.

Mr. *Baker*.—It is said in the bill, “upon the death, removal, or absence, &c.” Whether a vacancy happens by death, removal, or absence, it is considered in the same light : but the removal may be by the act of the governor, or by the act of the King ; and the absence may be accidental or designed. It is so generally expressed here, that whatever be the occasion, the King has the power of admitting as many more members as he pleases. Is it proper that so general a power as this should be given, without distinguishing what those occasions may be ?

Lord *North*.—This absence must be a very serious absence. The vacancy must be filled up by his Majesty in council : government cannot be informed of a slight absence. It must be an absence out of the colony ; not an absence of illness. I have an amendment of some consequence to propose. It is necessary that a power should be given to the legislative council to raise certain rates, corresponding to our county rates and parish rates ; but care should be taken, in drawing it up, that the words of the proviso do not convey a general power to the council of imposing taxes upon the province.

The noble lord then read his proviso as follows :

“Provided always, that nothing in this act contained, shall extend to authorize or empower the said legislative council to lay any taxes or duties within the said province, such rates and taxes only excepted, as the inhabitants of any town or district within the said province may be authorized by the said council to assess,

levy, and apply, within the said town or district, for the purpose of making roads, erecting and repairing public buildings, or for any other purpose respecting the local convenience and economy of such town or district."

The proviso was read a first time.

Mr. *Charles Fox*.—I do not rise to oppose this proviso, nor to make, at this time, an objection to the clause, but to remark, that they contain two principles; first, that that which is the proper legislature, is not the proper legislature for laying taxes. By the amendment, another principle is established, which I am pleased to see admitted—that that can never be a proper power for a legislature to possess, which is at the distance this country is from Canada. The inconveniences are so obvious, that the noble lord is obliged to move an amendment, to give authority to some power to raise a tax.

Lord *North*.—I am extremely happy, that any motion of mine coincides with the sentiments of the honourable gentleman. His principles justify his interpretation of the clause; yet we may have some difference of opinion about the power of the legislature. The supreme legislature may communicate to a subordinate legislature a power of making laws without raising taxes; but it is equally certain, that there is no supreme legislature, that has not within itself the power of raising taxes. At the same time, that all legislatures on the other side of the Atlantic ought to have the power of taxation, it does not follow that it would be impossible, inconvenient, or wrong, in any respect, that the supreme legislature should, for purposes respecting the whole empire, exert, even on the other side of the Atlantic, the power of taxation.

The proviso was agreed to; after which, the question was put upon the clause.

Mr. *Charles Fox*.—I wish, Sir, to state, in two or three words, what I consider to be the principle of this clause. My objection to the bill consists mainly in my objection to this clause: it begins by stating, that "it is at present

inexpedient to call an assembly." Now, that I can contradict this assertion, and say it is expedient to call an assembly, I will not assert; but, from all the information I have obtained in this House, I am inclined to think it is expedient. The principle laid down, in the course of these discussions, has been this, that the government of the colony ought to be assimilated, as much as possible, with that of the mother country. That the establishment of this legislative council is a step towards such assimilation, I hold to be impossible. I am free to say, that the Canadians are my first object; and I maintain, that their happiness and their liberties are the proper objects, and ought to be the leading principle, of this bill; but how these are to be secured to them without an assembly, I cannot see. It is not in nature for men to love laws, by which their rights and liberties are not protected. I must have more substantial evidence before I consent to establish arbitrary power in that country: before I consent to establish such a government upon the principle, that *volenti non fit injuriâ*, I must be exceedingly well assured of the *volens*. You say, that the measure may be corrected. But, is it likely that this legislative council would go on, from day to day, considering how they could abridge their own power? This, Sir, is what can be expected from no set of men whatever. I never wish to see the liberties of a country dependent on such extraordinary virtue. Hitherto, I have not heard a single argument against the establishment of an assembly. We have heard much of the danger of putting power into the hands of the Canadians; but as the persons of the greatest consequence in the colony are stated to be attached to French law and French customs, are we not, by preferring a legislative council to an assembly, putting power into the hands of those most partial to French government? No one has urged the circumstance of the people of Canada being Roman Catholics as an objection to an assembly, and I trust I shall never hear such an objection stated; for no one who has ever conversed with Roman Catholics can, I

think, believe that there is anything repugnant, in their views, to the principles of political freedom. The principles of political freedom, though not practised in Roman Catholic countries, are as much cherished and revered by the people, as in Protestant countries. If there was danger, I should look for it more from those of high rank, than those of low.

Lord *North*.—In the first place, Sir, I cannot admit, that the evidence taken at our bar has been in opposition to the principle of the bill ; on the contrary, I think it confirms the most material parts of it. With regard to the particular clause before us, what have the witnesses at the bar said ? The governor certainly is evidence against an assembly ; the chief justice certainly is evidence against an assembly ; Mr. Maseres is for an assembly. But, in point of fact, what came out in evidence ? That there were in the province at present one hundred and fifty thousand Roman Catholic subjects, and about three hundred and sixty Protestant families, whose numbers we will suppose to be a thousand or twelve hundred persons ; but very few of them are possessed of any property at all. The fair inference, therefore, is, that the assembly would be composed of Roman Catholics. Now, I ask, is it safe for this country—for we must consider this country—to put the principal power into the hands of an assembly of Roman Catholic new subjects ? I agree with the honourable gentleman, that the Roman Catholics may be honest, able, worthy, sensible men, entertaining very correct notions of political liberty ; but I must say, there is something in that religion, which makes it not prudent in a Protestant government, to establish an assembly consisting entirely of Roman Catholics. The honourable gentleman is of opinion, that more is to be dreaded from the seigneurs than from those in the lower ranks. Sure I am, that the seigneurs, who are the great possessors of the lands, would be the persons who composed the assembly, and some of them will, I hope, be admitted to the legislative council ; but then, the governor will choose those



on whose fidelity he has the greatest reason to rely. They will be removeable by the King in council, and will not depend wholly upon the Roman Catholic electors, or be removeable at their pleasure. It is not at present expedient to call an assembly. That is what the act says; though it would be convenient that the Canadian laws should be assimilated to those of this country, as far as the laws of Great Britain admit, and that British subjects should have something or other in their constitution preserved for them, which they will probably lose when they cease to be governed entirely by British laws. That it is desirable to give the Canadians a constitution in every respect like the constitution of Great Britain, I will not say; but I earnestly hope, that they will, in the course of time, enjoy as much of our laws, and as much of our constitution, as may be beneficial for that country, and safe for this. But that time is not yet come.

*Mr. Pulteney.*—The noble lord has said, that there could not be an assembly granted, because, from the great number of Roman Catholics compared with Protestants, there would not be a fair and equal representation; but, will you conclude, that because you cannot give them the best sort of assembly, therefore you will not give them any at all?

*Mr. Charles Fox.*—I did not speak of the opinion of the witnesses, with regard to the propriety of an assembly. I spoke only of the inclination of the Canadians themselves to an assembly. General Carleton said, they did not wish for one, because of the disgrace into which the American assemblies had fallen. After that objection was removed, they would wish for an assembly. I understood both Mr. Maseres and Mr. Hey to say, that the Canadians would like an assembly, but that they would not like an assembly of Protestants. Had the evidence been on the other side, I should have required very strong proof to make me suppose, that men do not like to have a share in the government of their country.

*Governor Johnstone.*—I wish to speak to a point of fact.

It is said that there are a hundred and fifty thousand Roman Catholic subjects in Canada. Now, if this is intended to be used in argument, I shall beg leave to produce a paper properly authenticated, by which it is shewn, that the number cannot exceed eighty thousand. General Carleton spoke from common report. Here is the most absolute evidence ever given—the name, sex, age, condition of every one person in the province, is stated in a census taken in 1766. Can you fancy the population to have so much increased? Why, it is greater than the increase of population among the frogs. All the questions respecting tithes and the clergy, depend on the numbers.

Mr. *Dempster*.—It has always appeared to me necessary, that laws should not be too hastily made; that they should not be the result of one day's deliberation; and that a certain time should elapse between the proposing of the law, and the day on which it is to take place. There is nothing so shocking as the law made by a drunken prince over night, which is to take place next morning. Whoever reads the history of an arbitrary country will see it: whoever reads the history of the East-India Company will see the necessity of it. When a law is proposed in council, it should be immediately promulgated in some town or province. A second publication should take place at the end of three weeks; and another at the end of three weeks more. At the end of six weeks, it will become a law. I wish to propose another amendment; which is, that the law shall not have force till it has been registered in the supreme courts of that country. This will make it approach, at least in some degree, to the edicts of France, and be a little check to the exercise of arbitrary power.

Lord *North*.—I am entirely of opinion, that one resolution of the council should not make a law; but that it should be considered two or three separate times, and at certain intervals be promulgated and registered. All that is very reasonable, but I should apprehend that three weeks between each reading is too much. Many circumstances may occur which will not admit of that time. What you have

done in this bill has only given a general power to the council. The rest is matter of detail, meant to be formed upon the King's instructions ; and either by those instructions or by the bill it will undoubtedly be taken care of.

The clause was agreed to.

Mr. *Jenkinson*.—It having been mentioned last night, that the act of supremacy, besides declaring that all supreme power resides in the King, &c., enacts, that every person in holy orders, every person exercising office, shall be obliged to take the oath which enters very largely into the speculative question of the Pope being the head of the church ; the consequence would be, that every priest, if obliged to take that oath would certainly relinquish his cure, and that parishes would be left without priests ; or persons of bad morals, who would have no scruple to take the oath, would be in possession of this charge—I have drawn up a new oath, which I beg leave to bring up, and which it is my wish to have inserted as a clause in the bill.

It was accordingly brought up, and read as follows :—

“ Provided always, and be it enacted, that no person professing the religion of the church of Rome, and residing in the said province, shall be obliged to take the oath required by the said statute passed in the first year of the reign of Queen Elizabeth, or any other oaths substituted by any other act in the place thereof ; but that every such person who by the said statute is required to take the oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following oath before the governor, or such other person in such court of record as his Majesty shall appoint, who are hereby authorized to administer the same ; *videlicet*,

“ I, *A. B.*, do sincerely promise and swear, that I will be faithful, and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, Crown, and dignity ; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs, and successors, all treasons, and traitorous conspiracies and attempts, which I shall know to be against him, or any of them ;

and all this I do swear without any equivocation, mental evasion or secret reservation, and renouncing all pardons and dispensations from any power or person whomsoever to the contrary. So help me God.

“And every such person who shall neglect or refuse to take the said oath before mentioned, shall incur and be liable to the same penalties, forfeitures, disabilities, and incapacities, as he would have incurred and been liable to, for neglecting or refusing to take the oath required by the said statute passed in the first year of the reign of Queen Elizabeth.”

The clause was agreed to. After which, the preamble of the bill was read.

Mr. *William Burke*.<sup>(1)</sup>—I do not remember that I ever saw the House of Commons in so sick a situation as it is at present. [Cry of order! order! order!] I say, Sir, that the parliament of Great Britain is in an unfortunate situation. This is the worst bill, that ever engaged the attention of a British council. It is a bill to establish the Popish religion—to establish despotism. There have been instances in human affairs, in which, for purposes of commerce, we have established freedom, as far as we could, in a certain locality; but to establish Popery, to establish despotism, in a conquered province, is what we have never before done. I am aware I cannot count forty upon you; [There were forty-five members at this time in the House] but I will say, that this business has been brought forward very late in the session; when men of great rank and property in this

<sup>(1)</sup> Mr. William Burke had been secretary to General Conway, while one of the principal secretaries of state. In 1777, he proceeded to India; carrying with him a letter from his kinsman Edmund, to the late Sir Philip Francis, containing this passage—“I part with a friend, whom I have tenderly loved, highly valued, and continually lived with, in an union not to be expressed, quite since our boyish days. Indemnify me, my dear sir, for such a loss, by contributing to the fortune of my friend. You know what his situation has been, and what things he might have surely kept, and infinitely increased, if he had not had those feelings which make a man worthy of fortune. Remember that he asks those favours which nothing but his sense of honour prevented his having it in his power to bestow.” He became agent to the Rajah of Tanjore, and subsequently deputy paymaster-general for India.

country must be tired. There is Mr. Soame Jenyns. He is a lord of trade, and possesses a great deal of wit, and a great deal of information. I wish to hear him speak upon the subject. I also expect to hear the attorney and the solicitor-general; who have hitherto been very sparing of their law. They heard the witnesses at the bar, but did not dare to say they were wrong; and they saw the majority voting plump in the teeth of their own evidence. I say it is quite disgraceful to them, not to tell the House, whether the King is or is not bound by this bill to apply a portion of the revenue arising from tithes, to the establishment of a Protestant clergy in the province. I say, that by this bill, he is not bound; but may apply those revenues to any purposes, however extravagant or profligate—either to raise an army, or to bribe, or anything in the world that he pleases. I will say this to that majority to whom I am to submit, and to that public who may hear the little which I have to say, that never, since God made the world or parliaments existed, was there a time when the conduct that is now carried on was justifiable. The gentlemen who oppose the bill, knowing it was impossible to defeat it, have almost worked themselves to death, to make it as far as they could, consonant to English liberty, and the principles of the English constitution. I do not know what they meant by opposing the amendment of my honourable kinsman, for placing the debateable tithe under the control of the Society for the Propagation of the Gospel. I vow to God; that I believe the noble lord did not know his own situation; that he did not know there was such a thing in the country as that society. I don't believe the law officers knew a bit about it. But whether he knew there was or was not such a society (I don't know which, nor much care), I say, nothing but ignorance can justify the refusal of that motion of my honourable kinsman. There will come an hour, when it will be necessary, when it will be proper, when it will be just, to testify that there was some opposition made, some protest entered, against this mad proceeding.

The preamble being agreed to, the House resumed.

*Friday, June 10.*

Sir Charles Whitworth reported to the House the amendments which the Committee had made to the bill. The first clause being read, there was much puzzling about settling the boundary line. Mr. Edmund Burke, Mr. Jackson, Mr. Baker, and Sir Charles Whitworth went up stairs, in order to settle it, while the House was supposed to be proceeding upon it. The House continued for at least half an hour doing nothing in the mean time. The difference was, whether the tract of country not inhabited should belong to New York or Canada? At five o'clock, Mr. Edmund Burke returned with the amendments; some of which were agreed to, others not. The following is the clause as finally agreed to by the House:—

“That all the territories, islands, and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the river Connecticut, keeping the same latitude directly west, through the lake Champlain, until, in the same latitude, it meets the river St. Lawrence; from thence up the eastern bank of the said river to the lake Ontario; thence through the lake Ontario, and the river commonly called Niagara; and thence along by the eastern and south-eastern bank of lake Erie, following the said bank, until the same shall be intersected by the northern boundary, granted by the charter of the province of Pennsylvania, in case the same shall be so intersected; and from thence along the said northern and western boundaries of the said province, until the said western boundary strike the Ohio; but in case the said bank of the said lake shall not be found to be so intersected,

then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said province of Pennsylvania, and thence, by a right line, to the said north-western angle of the said province; and thence along the western boundary of the said province, until it strike the river Ohio; and along the bank of the said river, westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the merchants adventurers of England trading to Hudson's Bay; and also all such territories, islands, and countries, which have, since the 10th of February 1763, been made part of the government of Newfoundland, be, and they are hereby, during his Majesty's pleasure, annexed to, and made part and parcel of, the province of Quebec, as created and established by the said royal proclamation of the 7th of October 1763.

"Provided always, that nothing herein contained, relative to the boundary of the province of Quebec, shall in anywise affect the boundaries of any other colony."

Mr. *Mackworth*.—Sir, after the flood of eloquence which, for five days, has deluged this House, even to washing away a large portion of its members, it would ill become me to occupy much of your time, while I call your attention to the situation in which the English merchants trading to Canada will be placed by this bill. Supposing the attachment of these merchants to the civil laws of their native country to be prejudices, surely, Sir, they are prejudices that ought to be allowed to run *pari passu* with those of the native Canadians. The annual amount of the exports to Canada is from one to two hundred thousand pounds; and, though the number of these merchants may be small, their credit is great. We have no proof that the mode of trial by jury had been attended with any oppression; on the contrary, it was becoming more and more a favourite with the people; and it is the opinion of these merchants, that it will be impossible to carry on mercantile transactions without it. They therefore ask that it may be adopted; and that contending parties may have the option of a jury

in all civil cases. Now, what mischief could arise, even if those Canadians who are unfriendly to the measure were compelled to have a jury? I hope, therefore, that the House will suffer the clause I am about to propose to go out by way of experiment. It has been said, that the point may be settled by an ordinance. I admit that it may; but why leave so important a matter to the will of another? The merchants say they prefer having it settled by an act of parliament. If the governor and council, after a trial, found it did not succeed, I should at any time be ready to consent to its repeal. I move, Sir, that the following clause be added to the bill:—

“That in all trials relating to property or civil rights, where the value shall exceed a certain sum, either of the contending parties may demand a trial by jury, constituted according to the laws of England, and that the issue between the parties shall be determined by the verdict of such jury, and not otherwise.”

Lord *North*.—In considering, Sir, the various interests involved in this regulation, many different parties present themselves, with whose inclinations and desires the House must naturally be disposed to comply. The first great interest that calls for the consideration of the House is the interest of this country, in point of sovereignty and authority over that; the second interest is, undoubtedly, that of his Majesty's Canadian subjects at large, who are, with the exception of a very small number, professors of the Roman Catholic religion; a third interest is, the one to which the honourable member has directed the attention of the House—that of the English merchants trading to the province, to whose capital and to whose skill much of the increase of commerce which has taken place in that colony is to be attributed. There is also another party, whose interests ought not to be left out of our consideration—I mean the ancient noblesse.

In the first place, Sir, with regard to this clause, which proposes to give optional juries in civil causes, I do not consider that it, in any degree, affects the right of this



country over Canada in point of sovereignty. If the Crown is interested—if the power and authority of this country is interested—in any questions concerning a jury, it is in criminal matters; and such a jury the bill has already given to the Canadians. The British parliament, Sir, having duly considered the great protection afforded to the subject by juries, against the claim and authority of the Crown, have universally given them a jury in all criminal causes. Now, with regard to giving them also a jury in civil causes, as far as the King's authority is concerned, I do not conceive that any individual, standing in my situation, would object to it. In granting a jury in all civil causes, the only point to be considered is, the happiness of the parties concerned. The English merchants trading to Canada have an undoubted claim to the protection of parliament. They are a most respectable body, and much of the flourishing condition of the colony is owing to their exertions. In compliance with their interests and desires, I would go as far as the honourable gentleman, in granting them every thing that can be granted, without producing inconvenience and embarrassment. If, Sir, I understand the evidence which has been given at our bar, it certainly is not the desire of the Canadians to have the trial by jury in civil causes. General Carleton, if I remember his evidence, informed the House that, though the mode of trial by juries had been introduced into the courts, the Canadians, in general, did not desire to be tried by them; and it was his opinion, that to give them their old system of laws would be the only means of making them a happy people. With regard to the other evidence, Mr. Hey, the chief justice of Quebec, was of opinion, that the trial by jury is, at present, not preferred by the people; that the noblesse and the superior class of the Canadians hold it to be humiliating; and that the lower orders consider it, as in truth it is, a burthen. Mr. Hey told us, that he did not think the Canadians, in their present state of ignorance, were fit to be upon a jury; that he had endeavoured to explain to them the benefit of the English laws, particularly

in point of trial ; but, whether what he said was not properly interpreted to them, or whether his reasons and not his argument had any effect upon them. He also said, that there had been cases of misbehaviour in juries ; not of corruption or partiality, but several cases in which they had refused to decide at all. Mr. Maseres, it is true, told us, that juries would, he believed, be liked under proper regulations ; but that the people did not choose to give their time and attendance for nothing. M. Lotbinière, on a question being put to him, whether he did not think the English laws the best for the Canadians in general, answered, that he made no doubt our laws were good and wise, and made us a happy people, but that his countrymen preferred their old laws and customs. Now, Sir, this proposition requires, that the jury shall be, in all cases, constituted according to the laws of England ; and is consequently not such a jury as, from the evidence of the gentlemen you have heard at your bar, is the most proper and suitable for the people of Canada. It goes to submit every question of every sort, relative to property and civil rights ; all the questions of feudal right ; all the questions of private tenures, and the persons holding under them, to trial by jury ; and after what we have heard, I think it would be rather a hasty step to entrust all these things to the decision of an optional jury. The best way will be to leave the whole question in the hands of those to whom the administration of justice in Canada will be confided, and whose duty it will be to adopt, from time to time, such amendments as the actual state and condition of the colony may require.

Upon these considerations, I submit, whether it will be proper to bind down the Crown by the clause now offered, or whether, in this case, the people of Canada may not safely repose in the confidence, that, in the forming of the courts of judicature, the interests of all persons concerned will be taken into consideration, and such a plan settled as, under the peculiar circumstances of the country, will be found most beneficial to the whole of the inhabitants.

Mr. Serjeant *Glynn*.—In the concluding proposition of the noble lord, I perfectly agree; namely, that as the House is now considering the plan of laws and judicature to be given to the people of Canada, the one that is best calculated to promote the permanent happiness of the people who are to be governed by it is the preferable plan, and the one which it is the duty of the King to give them. Having thus far agreed with the noble lord, he must pardon me when I declare, from the bottom of my heart, that I think the only certain step we can take to secure for them that permanent happiness, is to bestow upon them that system of laws and judicature, which have been productive of so much happiness to ourselves at home, and obtained for us so much honour abroad. I would give it to them subject to such restrictions and regulations as the particular tenures by which their property is held might require. Give them, if you please, their particular usages and customs, but let the leading principle be that of the laws of England.

I am one of those, Sir, who are glad that the clause has been proposed; and though, to be candid, I cannot say that the adoption of it would remove my objections to this bill, yet I am certain it has a tendency to reconcile the minds of some gentlemen to the measure, and to remove some of the most striking and formidable objections to it. The omission of this right of appeal to a jury in civil causes appears to me an insuperable objection to the bill. To any predilection of the Canadians for their ancient laws and customs, I should be inclined as much as any one to yield, as far as I could do so with safety; but to carry my compliance to the exclusion of the laws of England—to consent to substitute in their place the laws of France—and to add to all this a form of legislature correspondent to that of the kingdom whence those laws were borrowed, is what I can never consent to. And I own my objection to the measure was strengthened when I was told, that there was a prejudice and predilection in these people favourable to those laws, and that it was considered good policy to avail ourselves

of this predilection, to build a system of government upon it so contrary to our own. I should have thought it was rather our duty, by all gentle means, to root those prejudices from the minds of the Canadians, to attach them by degrees to the civil government of England, and to rivet the union by the strong ties of laws, language, and religion. You have followed the opposite principle ; which, instead of making it a secure possession to this country, will cause it to remain for ever, a dangerous one. I have contemplated with some horror the nursery thus established for men reared up in irreconcilable aversion to our laws and constitution. When I was told by the noble lord, that they were insensible to the value of those laws and held them in contempt, wishing to be bound by laws of their own making—when I was told that they had no regard for civil rights, I must confess that it operated with me in a contrary way, and I could not help thinking that it furnished an unanswerable argument against gratifying them. I think that we could not, with humanity or policy, gratify them in their love of French law, of French religion. The common safety is concerned in our refusal.

If the Canadians love French law and French religion, and entertain opinions adverse to the peace and safety of the mother country, would it not be wise to recal them from their delusion, by putting them in immediate possession of civil rights ; by which they would see all questions concerning their own property determined on the fairest and most impartial manner, by laws which are the best guard of the weak and the strong, the inferior and the most powerful part of the community? Without they possess the highest sense of civil rights, they can never be good friends with us, or good subjects of the King. Upon this ground, I expected there was an opening left for the laws of England being restored to them : but now I find that notion exploded ; and upon the ground, the professed ground, that juries in civil causes are incompatible with the laws you are giving them. If, Sir, juries, the most valuable part of our consti-

tution, are incompatible with the laws we are giving the Canadians, we cannot be at any great loss to discover what the general spirit of those laws must be. Will anybody say, that juries are incompatible with any form by which justice can be administered? In God's name, what can be the views and what the operations of that bill, with which juries are incompatible? what can be the purposes and designs to be answered by this bill? I have no pleasure in thinking of them: I have too much decency to name them.

The noble lord, having passed this sentence of condemnation against juries, went on to assure us, that administration had no interest in the matter—that there was nothing to be gained to the Crown by the suppression of juries, and establishment of another form of administering justice. The noble lord presumes, that provided the criminal proceedings are conducted on the principles of the laws of England, no questions will arise between the subject and the Sovereign. He told us, that there was no interest in the Crown, in contradistinction to this right which we claim for the subject. But, the noble lord is mistaken. If there is a design of extending the prerogative; if violent or extravagant acts of power are ever attempted, they may be attempted with impunity, unless juries are allowed. It is not in criminal matters only, that the right of the Crown can be brought in question. In civil proceedings we find the inestimable value of juries, when applied to the important object of protecting the liberties of the people against the oppression of all those, magistrates or others, who fancy themselves great enough to commit acts of that description with impunity. All actions brought for the redress of personal wrong come into this scheme of being tried without a jury. Duties claimed by the Crown ought to come in the shape of civil actions. If those duties have not been taken legally, the subject brings his action to recover; as Hampden brought his action in the great case of ship-money. This is just the place to begin with such a scheme. The Canadians are a submissive, quiet people. They are not inclined to dis-

pute. If any case of taxation or imposition, equally unwarrantable with that of ship-money, is to be tried there, supposing a man with Hampden's spirit to stand up—what prospect of success has he? His right will never come to the decision of a jury—it will be determined by the judge. The noble lord tells us, that justice will be equally administered in civil and in criminal causes. Let me ask the noble lord, supposing an action of that importance brought—supposing a case of general warrant?—it does not strike me as ridiculous—

Lord *North*.—I certainly did not imagine the learned gentleman could suppose, from anything in my manner, that anything he had said was ridiculous.

Mr. Serjeant *Glynn*.—I have stated a point which I think important. I have stated an opinion I shall always hold, in condemnation of general warrants: but it is indifferent in this question. Let me put the case of an action brought for redress against oppression of the very highest nature—by whom is that action to be tried? By whom but delegates appointed by the Crown, and removeable by the Crown, through the medium of the governor. It is to be tried by a judge, and there is no opportunity given for a jury to exercise their opinion upon it. After having heard this, will the noble lord still cling to his opinion, that juries are of no use in civil cases, and that the Crown will gain nothing by this suppression of juries? If you take away juries, you leave these people in as unguarded a state as the inhabitants of any country whatever; not to add, that you contradict the eulogiums of all foreigners on our constitutional mode of administering the laws, and it goes out, on the authority of this and the other House of Parliament, that the constitution they have been taught to value is an affair of no consequence; that general warrants are innocent things; and that trial by jury is a daninable mode of trial, affording no security either to the liberty or property of the people.

Such, Sir, are the sentiments which this bill is calculated to give birth to. The noble lord tells us, that in consenting

to the passing of it, we are complying with the wishes of the Canadians; and he has cited the opinions given at our bar, to show that there exists a fixed, settled, and general aversion to trial by jury throughout the province. He supposes that juries were refractory; that they did not do their duty; that they could not be prevailed upon to attend. Now, Sir, the plain answer to all this, as I conceive it to be, is, that they have not been bound to attend. In England, coercive measures are resorted to: and why not introduce the practice into the colony? Another objection is, that when they do attend, they will not perform their duty: but this, Sir, is a very poor argument; for I can never admit, that one or two instances of the abuse of juries can fairly be brought forward as an argument against the existence of the institution, any more than I could admit certain passages, which I find in history, of the abuse of its power by this House, to be adduced as proofs, that we ought no longer to have a House of Commons. Abuses are inseparable from all human institutions. If this argument of abuse be allowed, you may at once part with your whole constitution. The right of being tried by a jury is one of the fundamental privileges of the people; and if, in some few instances, the privilege has been abused, the mischief arising from such abuse has been of no great consequence; no public mischief has followed: whereas, whenever the legislature abuses its powers, great and important public mischief must necessarily follow. I conceive, therefore, that it is no argument against the proposed clause, to say that juries occasionally have abused the power reposed in them. But, Sir, we all know that the constitution of a jury is not without a check, as well as every other part of our constitution. If juries will take upon themselves to determine the law, it is in the power of the party aggrieved by that determination, to take it out of their hands by a demurrer upon the evidence. It is only upon questions of law, that you can have special verdicts found. The party demurs upon the evidence, and every question of

law comes before the court. No institution in the world is less likely to be abused ; and, in cases of abuse, the law is not without a remedy.

The noble lord has put it, that we are now giving laws to a great number of new inhabitants, and to a small body of our old subjects, and that it is our duty to give them such a form of government as shall best promote their happiness ; but what I contend for is, that the bill upon our table, instead of providing that best form of government, puts them in the worst possible condition, as it takes from them a blessing which they now enjoy, and the greatest which it is in the power of any legislature to bestow. Instead of being tried by juries selected from among themselves, and by judges sworn to administer justice according to the laws of the country, you substitute a trial before an individual appointed at the will of the governor, probably uneducated in those laws, and, if educated, brought up to entertain violent notions of law and justice. Such are the men by whom you would have justice decided ! And all this is done, because it is right to indulge the natural predilection of the Canadians in favour of their ancient laws and usages ! Let me, Sir, in like manner, plead the law in favour of the English merchants—in favour of the English inhabitants. If it be cruel, if it be oppressive, to obtrude upon the Canadians this law, which they have been eleven years in the exercise of, what should be said of those who take away the law from the poor English subjects who reside there ? These men have a predilection and liking for the laws of their own country, and claim their privilege of being protected, according to the usage and just principles of policy of their ancestors. They have settled there in consequence of the royal faith pledged to them, that they should not be deprived of the law which they esteem so valuable, and that none of their privileges should be infringed. Is it justice to these men to force them to live under an arbitrary form of government, and to submit to the administration of justice by the principles of another



law, to the exclusion of juries, for the gratification of others, who prefer being placed under a despotic form of government? Is not the gratification due to the natives of England, rather than to the natives of Canada?

There is, Sir, another consideration which I will submit to the House. Every man born in Canada since the conquest must be a free-born subject. In process of time, all will be of that description, and as such, entitled to partake of all the rights and privileges of that system of government which we are about to transmit to them. Is it then, wise, I ask, out of compassion to the prejudices of those who have been born under the arbitrary law of another country, to perpetuate a system of government, which will deprive all those who may hereafter be born, from the enjoyment of the privileges of other British subjects? I will give the House no further trouble. I see that the attempt to resist the passing of this mischievous bill will be in vain; but I earnestly hope, that it will be rendered less mischievous, by the admission of the clause proposed by the honourable gentleman near me.

The *Attorney-General*.—I shall confine myself more particularly and pointedly to the question immediately before us; namely, whether the clause proposed to be introduced does or does not square with the other parts of the bill? The first thing that strikes me is this—that it clashes with the preceding clause, which says, “that all causes that shall hereafter be instituted in any of the courts of justice, to be appointed within and for the said province of Canada, shall be heard and determined according to the laws and customs of that country.” Now, it is upon this clause that the honourable gentleman proposes to engraft another clause, which is to give the party concerned the option of a jury; but, will any gentleman say, that trial by jury was one of the ancient laws and customs of Canada? I am afraid it would be extremely difficult indeed to introduce such a clause into the present bill; and, for what purpose is it intended to be introduced? My learned friend, who

argued with great zeal and eloquence the cause of the Canadians, tells us, that their desire to return to their old laws and customs is not a sufficient reason for our permitting them to do so. Now, Sir, I do not believe that any address or any eloquence will succeed in inducing a polished assembly of men to adopt the barbarous principle, that the moment a conquest is obtained, it consists with humanity, it consists with wisdom, it consists with common honesty, to take away all the laws of the conquered country, and more especially that portion of those laws which regulated the proceedings of the inhabitants in civil matters. Speaking of the rights of conquest, Grotius has these words, "*Cum omne imperium victis eripitur relinqui illis, possunt circa res privatas et publicas suæ leges, suique mores et magistratus.*" These are the moderated ideas of conquest. Such has been the practice of nations between one another. To say, therefore, that you would take from the Canadians, against their will, their established mode of deciding all civil questions, and give them another which is, in your opinion, better than theirs, is to talk in a strain partaking, in my mind, of a great deal of ignorance, and at the same time of barbarity; and such as cannot be inculcated, at this time of day, in any assembly that has at all considered the subject.

But we are told, that the Canadians do not object to our mode of trial by jury; that eleven or twelve years' experience has convinced them, that the manner of trying rights according to the English form is better suited to them, and more favourable, than the old manner of trial. I was exceedingly surprised to hear this assertion, nor can I conceive from which of the witnesses it is collected. When Mr. Maseres was asked, whether the Canadians did not consider it a burthen to be dragged from their homes to serve upon juries, he answered, that he had heard complaints of the kind. In reply to another question, he gave it as his opinion, that a small allowance would make them wish to serve upon juries. But then, Sir, what sort of a jury? We have all seen the

scheme which this gentleman has proposed for a jury. Is it an English jury? Is it not a court to consist of fifteen persons? and is not the decision to be by a majority? Is this at all like the constitution of an English jury? Certainly not. What is the next thing he proposes? That every jurymen should be paid five shillings; so that three pounds additional expence is put upon every cause. And yet this is the gentleman now quoted, to prove that the Canadians are fond of our constitution of a jury!

But it is said, that juries will be of very great advantage, particularly in causes of revenue, or in causes where constitutional questions may arise. What, Sir, is it then the serious and sober opinion of any gentleman living, that questions of revenue, as to whether the claims have been legally demanded or not, are, of all questions, the most fit to be put to a jury—a provincial jury? or that, upon all those constitutional questions which must always be depending between this country and that, it is better to refer those questions to the juries of that country, than to the judge? I have already cited an authority much stronger than any opinion I can give, which will be regarded, on this subject, with much less prejudice than any opinion of mine, that these are the very questions it would be unfit that juries should be admitted to decide upon. I look upon the Canadians, being the most ancient subjects, as first entitled to our protection; next come the English inhabitants, and, lastly, the English merchants who trade thither—which is a much remoter interest still. Now, if those who live upon the spot are not entitled to this degree of consideration, it seems odd to insist, that those who trade with them should be allowed an alteration of their laws, in order to accommodate the commercial intercourse which they may hold with them. But it has been asked, why introduce this new system into Canada? By the King's proclamation, the laws of England were supposed to be existing in Canada; yet it has been shown in evidence before you, that the Canadians, instead of resorting to those laws, have usually gone into the courts where those

laws were not in force, or have decided the matter in dispute by reference among themselves. Can the laws be said to be conformable to their wishes, when their practice is so much to the contrary? And why should not laws be allowed them in conformity to the wishes they entertain? Upon this account I wish the clause not to pass.

Mr. *Dunning*.—Sir, in entering upon the subject, there are three classes of individuals to be considered: the Canadians, who are the old inhabitants; the English settlers in the colony; and the merchants, inhabitants of this country, trading to that colony. The first class are represented as being averse to trial by jury; the two last are stated to be desirous of the establishment of such a tribunal, but their desires, it seems, are not worth attending to. I cannot, by any means, assent to the opinion of the learned gentleman, with regard to the first class, when he supposes that the evidence of the witnesses who have been examined at our bar tends to prove, that, in their judgment at least, trial by jury was not desirable in the opinion of the old inhabitants of Canada, the King's new subjects. If I can hear aright, if I can understand rightly, all those witnesses agreed, and agreed so clearly, and expressed themselves so forcibly, that the most wilful misrepresentation cannot place them upon the other side of this question. Mr. Maseres, I am perfectly sure, was systematical in his evidence, in declaring, that the Canadians were ready to receive the trial by jury; that they desire it, and will not be content without it. It was presented to them in an optional form; and it was evident what their wish was, from the use they made of it: they claimed the benefit of it; they had the benefit of it; they were satisfied with the benefit of it. Mr. Hey, if I did not misunderstand him, said precisely the same thing. They therefore distinguished the line of difference, and stated where they were dissatisfied; in what they wished to have some modification of the law; what part of the old system they wished re-established; and what part of the new system they wished to be rectified. Every ear acquiesced in the voice that stated to them that, with

reference to all commercial subjects, all matters of contract, all matters of debt, all matters of civil right, with the exception of those that had relation to matters of religious property, might safely stand upon English bottom. These, with the whole criminal law of England, and particularly the right of *habeas corpus*, made up together a system, with which, in the opinion of Mr. Hey, the old and the new subjects of Canada would, at that time, have been perfectly content. But he went on to say, that he doubted whether such would be the case now ; though he still thought it ought to be.

Such, Sir, is the result of the evidence before us: but at the time that I say this, I am ready to admit, that if, after more accurate experience, we are now ripe to say, that a trial by jury is not adapted to the circumstances of the colony, we ought not to enforce it. Has any body made such discovery ? Has any body found out, that though applicable in criminal matters, it is not so in those which relate to personal property ? Indeed, every sort of right is capable of being stated, and of being discussed and decided upon by a jury. As to submitting questions of revenue to juries, God forbid that that idea should be understood in the full extent of it ! But sure I am, that if questions of revenue were not to be decided in this country by juries, no creature could endure to live in it for a single hour. That is the only check—and it is a feeble one—with regard to the claim of the Crown. Juries are not to make the law : they are not judges of the law : more especially are they not judges of such laws. The legislature may make those laws ; they are to administer ; they are to apply them. If the Crown, or the officers of the Crown, say such a law is imposed, it is not competent to a jury to question the validity of that law. If that be proved to their satisfaction they are bound to find it so ; they are bound to carry that law into execution. If they neglect that duty, it is obvious the same power exists to correct the misconduct of juries abroad as well as at home. If they persist in that sort of conduct, the law is not so weak, but that it can apply a proper coercion. I can hardly conceive a jury in a pre-

dicament of wilful determination to refuse to do their duty. In every point of view, I have always thought, that of all human institutions for the investigation of truth and the rejection of falsehood and error, they are by far the most competent judges imaginable. They are called upon to perform a duty: they return again into society, when that purpose is answered: they are liable to no temptation: they have the common interest of their fellow-subjects in view: they have every motive to induce them to do right: they have no possible temptation to do wrong.

Is that, Sir, the case with judges? With regard to the clause now proposed to be added to the bill, I think it does not warrant our going into that consideration. Upon that point, I will only beg to ask, who those judges are to whom the explication of this law is meant to be entrusted? After the passing of this bill, the excellent judge who appeared at our bar will be chief justice no longer, unless he should be again called to fill the same situation. The House, I trust, has not forgotten what he said with regard to himself upon that subject. A question having been put to him, whether he could make himself equally master of the Canadian law as of the English law, he answered, that it would require a great deal of time and attention, and he was afraid more abilities than he was master of. I beg the learned gentleman will tell us, whether he knows any one who has more abilities. I do not know where such a man is to be found. I think it will be difficult to meet with a man of that description.

The learned gentleman mistook when he spoke of a person thrusting himself into a place, for the purpose of getting what did not belong to him; and he affected to claim only three hundred and sixty men, as the whole amount of the number of Protestants in the colony; but, on this point, the witness afterwards explained himself to mean three hundred and sixty masters of families, making the number altogether about two thousand: but, whether three hundred and sixty, or two thousand, or twenty thousand, be their number, is no

part of the present question. These are men who did not thrust themselves into the place, for the purpose of getting what did not belong to them ; these are men invited thither ; these are men tempted thither. They thought they might trust the King's word ; they presumed that that word was sacred ; they did not foresee the time would come when any man would dare to violate it : it imported nothing of imposition to them. Those men, therefore, going thither upon a ground which they thought would not sink under them, now address themselves to you, and claim the protection of those laws, which are generally understood to secure to them the due performance of all men's engagements. That it is the desire of these inhabitants to have the trial by jury in civil causes introduced into this bill, every witness at your bar has borne testimony. I apprehend that their situation and condition, and the means by which they have been brought into that situation and condition, give them a just claim to the protection of the legislature. And why, Sir, is the third class to which I have alluded supposed to be less entitled in this case to consideration ? They are known to you as merchants trading to that part of the world : but how long has it been the case, that merchants trading to that part of the world have not been worthy of attention ; especially when they have this additional claim to urge—that the difficulties to which they are exposed sprung from the same origin—the King's proclamation ? The same witness has told you, that they have formed connections in that country ; that they have become creditors upon the faith of having English laws ; upon the faith of having English juries to administer those laws, if they should want them. The merchants are too contemptuously treated, if they are left to suppose, that this measure is not to be judged of at all by their inclination. But, if I were of opinion that it should solely depend upon the inclination of the Canadians, since it is not mentioned that it is desired by the Canadians, but only supposed that they are not averse to it, that they would not oppose it, and though only two classes would

desire it, their right to it depending upon such grounds as it does, I should say, there is nothing clearer, than that if the measure is to depend upon the inclination of the inhabitants, this inclination points clearly in its favour. But that is not the point upon which the question rests; for though it would be improper and impolitic to do any thing disagreeable to certain classes of the people, yet if any doubt exists, that doubt ought to be decided by your own judgment. The House ought to decide, whether it be proper to adopt or to reject it.

Sir, I have felt it to be my duty to detain the House thus long, in answer to the arguments which have been urged on the other side. I have not given myself this trouble, from any expectation that what I have said will produce any effect; but that I might reply to the only argument that has been urged, and to state, that what I have heard has not, in any degree, altered my opinion. One advantage, however, will result from this discussion. The fact, that there was a division upon this proposition will get into the Journals of the House, and there stand a perpetual memento, that a small minority were of opinion, that English trial by jury should not be abolished.

*The Solicitor-General.*—It is not my intention to enter into a debate on the other parts of the bill, but to confine myself to the clause now offered by the honourable member. It will not be, in my apprehension, an evidence that those who vote for the clause are of the opinion that the learned gentleman supposes, even if they do support it. I do not conceive, that it introduces an English jury into Canada. It introduces an institution somewhat similar to an English jury; but one, in my opinion, very unfit to be adopted in any country whatever. One argument made use of by the learned gentleman struck me, I confess, as being extremely dangerous, and not stated with his usual discretion. The learned gentleman established the truth of what, I believe, every man in the House is extremely well convinced—that the institution of trial by jury has been proved in this country to



be superior to any other mode of trial, of which we have any account in history. He spoke with a laudable zeal upon it: the custom cannot be carried too far, unless it leads us to argue, from our own sentiments, that the ideas of other men, when they are opposed to our own, are gross, barbarous, and absurd: but it is still less a fair argument to say to those who may be of a contrary opinion—"because I am convinced from experience of the value of a jury—because I consider it congenial to the constitution of this country—therefore it is a matter of no moment, whether you are satisfied with it or not; you are deficient in good sense; you are blinded by prejudice: it arises from the state of ignorance in which you live; you must divest yourself of this barbarism; be reformed; this institution is best for you, because I know it is best for me." Such a line of argument would go to sanction the establishment of the worst institution, as well as the best. Every nation is attached to its own usages. It requires us only to read history to be convinced, that deluges of blood have been spilt by nations, in their endeavour to force others to adopt them, who have not had the same motives for veneration and attachment to them. If you attempt by force to make men change their customs: if you attempt to make the establishment of the law precede the conviction of its expediency, you exercise the same power which the Spaniards have exercised over their subjects in America; and the establishment of the inquisition would be proved to be a right measure, from the conviction which the Spaniards had, that it was good for Mexico, because it was necessary for the constitution of Spain. They who think their faith in spiritual things more valuable than temporal felicity may, by a little stretch of reasoning, come to the conclusion, that the inquisition is to be preferred to all other considerations; and they would not think they acted barbarously in speaking this language to the people—"Quit your prejudices; be wise; agree with me in my reasoning, without further enquiry: the institution is good for you, not

because you are convinced ; not because I have taken any pains to convince you, but because the force of conviction in my own mind makes me know that it is right for me, and therefore it must be right for you." I am not in the least disposed to detract from any encomium which the learned gentleman has bestowed upon trial by jury, although his enthusiasm has led him a little beyond the bounds of historical accuracy. He instances Mr. Hampden's case in favour of a jury. A jury never could exist in that case. The learned gentleman supposes, that Mr. Hampden had brought actions to recover, and that he had a verdict. The case was this. He came in upon a process, pleaded to it, and the determination was against him. A jury had no more to do with the case of Mr. Hampden, than the court of chancery had.

I wish the learned gentleman who spoke last had not come in under the prejudice, that the matter had been argued differently to what it was. He supposed, that the merchants had been considered as men who had no right to complain ; though we all know, that had he been here, he would have heard, that all possible regard was due to them, and that so far from its being represented as impertinent in them to apply, the noble lord had said, that the questions in which they were concerned should be decided in the way most agreeable to them, and that every possible degree of attention should be shewn them.

Let me state, then, in a few words, how the bill stands. In criminal cases, the trial by jury is to prevail universally : in civil matters, although by no means incompatible with the institution of a jury, the bill states, that the laws and customs of Canada are to be the rule of decision—not that it shall be determined by the judges : it stands simply thus—that the laws and customs of the province are to form the rule of decision ; but how those causes are to be tried, what is to be the form of the judicature, of how many judges the court is to consist—all this is not stated in the bill, but is provided for in the clause which reserves to his Majesty

the power to erect proper courts of justice. The institution of a jury belongs to the judicature of the country.

I beg leave, in addition, to say what my opinion is upon this particular part of the question. I think the sentiments of the Canadians ought to be much attended to, in every regulation we make; that this is the polar star to which all the parts of the bill ought to be directed. Steering to that point, we should endeavour to assimilate the laws and customs of that country with those of our own: but this is not to be done by tyrannically introducing laws and customs to which the people are strangers. No doubt the institution of a jury for the trial of all facts, for determining the damages to be awarded for breach of contract and the reparation of a wrong, is the best institution that can be devised: but there are many countries which consider themselves free, that have no such advantages: there are many countries under British government which have no such advantage; yet these countries would be a little astonished to be told that they were slaves. They may be wrong in not having adopted it; but custom reconciles them to institutions attended with many inconveniences. I have not a doubt that there is no form of judicature so excellent to determine all matters of fact, so excellent to determine the amount of reparation for civil injuries, so excellent to determine questions of criminal law, as a jury is; but there is one principle of which I am equally well satisfied—which is, that that form of administration of justice is best, which the people over whom that justice is to be exercised think the best; that it is of the utmost necessity, that the people to whom justice is administered should think that justice is well administered, and that they live under equal law; under law administered to all men alike. It is of the utmost necessity, that the opinion of the people should be that justice is done; and it is of equal importance with this belief, that justice should be done. In the abstract, in moral matters, in edicts, in reference to Divine justice, in matters of opinion, the first consideration is, that justice should

be done,—*fiat justitia, ruat cælum*: but in political justice, it is full as important, that mankind should be satisfied that justice is done; that mankind should be satisfied, that the mode contrived for administering justice is such, that it will administer equal justice to all. Thinking so, I should hold it to be extremely unwise to tell a people, whose manners, usages, habits of life and thinking, would make them inclined to doubt that the mode you have devised for them is the best mode, that it is best for them, because you have found it from experience to be the best for yourselves.

It is in evidence at the bar—and I state it to the House as my opinion, which I believe I can never alter—that the introducing of an English jury, in matters of civil right, would be totally unfit for the present state of Canada—that the people would not believe that to be justice which was so administered. In the first place, Mr. Maseres, Mr. Hey, and General Carleton have all stated their opinions. I give entire credit to the candour and ingenuousness of all those gentlemen. Mr. Maseres has stated what he conceives to be the proper constitution of a jury, the proper qualifications of jurymen, under what course of regulations he thought Canada would bear a jury. These are, that jurymen should be paid at the rate of five shillings a man: whereby three pounds would be added to the expense of the litigation; which is, perhaps, too much. He thinks a jury should be composed of an unequal number, that a majority should decide, and that they ought to be bound by a positive rule, in all cases, to find a special verdict. Now, Sir, that is Mr. Maseres's idea of a jury that could obtain and could be received in Canada; and with which he thinks the people would be satisfied. But that is not an English jury; that is setting project against project. I think that is a bad institution of a jury. Many inconveniences would attend it: they had better be without a jury, until they are fitted to receive such a jury as would be more effective.

It is supposed that Mr. Hey stated, that the Canadians would have been satisfied at first to have admitted the trial by jury, but that, by the encouragement since given them, they had been induced to oppose it. Let us, Sir, consider a moment what that proves. Whatever the encouragement was, it would not produce the wish, if they had it not; but their readiness to express this wish, when encouragement induced them to do so, at least proves that the wish existed; that the temper of the people went to the preservation of their old customs. I think the learned gentleman overlooked what afterwards fell from Mr. Hey, or he would not have asked the question, why was that encouragement given? He says, he knew of no particular encouragement; that if there was any, it was not to be imputed to the governor, who afforded no particular encouragement on the subject; but he said, it was a natural progression in the minds of the people, who, from being at first in a state of distraction and despair, expecting to enjoy nothing, grew in hopes, until they came to extend their wishes to the restitution of their whole laws and customs.—of all that had been the favourite object of their earliest attachments.

Now, Sir, the evidence standing thus, what are we to do upon the subject? Will you disclaim juries for ever? By no means. Will you establish juries at once? I think that would be equally wrong. Will you take the optional jury? If so, the clause is improperly worded. My objections go to the clause—to the spirit and intention of it. It cannot be meant to give a jury power, in all cases, to determine the issue at law; for, in some cases, if a jury knows its duty, most undoubtedly it leaves the determining part of the law to the court. In revenue causes, it is said, a jury is particularly proper. I have always seen juries in revenue causes behave with the utmost honour, with the utmost candour, with the utmost attention to the rights, public and private, of their fellow-subjects. There is nothing more to be wished for, in the conduct of juries in revenue cases, in this country. But, would that be the case in Canada? I do not say,

because the jury in Canada is apt to run riotous, that that is an argument against its being eventually established there: but the fact is, that two questions, standing precisely on the same grounds, have been determined in England by a jury and judge in one way, and by a jury in Canada in another. They were determined to find against the direction of the judge. They were told of what had happened in England; they were told of the conduct of the English jury; they were told, that all the merchants were satisfied with the verdict of that jury. Their duty was pressed upon them. If they were right in determining that question as they did determine it, the English jury was wrong. Their conduct was the contrast to a better conduct here. In England, the turn of men's minds is formed to the business of a jury. They come with previous knowledge of their duties to the determination of this or that question. They see, from daily experience, the conduct of juries in various cases. They reflect upon that conduct. Juries are not unsuited to their business in this country; but we see that when a jury in Canada was empannelled, it would not confine itself to its proper province and give a proper verdict.

But it is said, that all that is now proposed is an optional jury. The first principle—gentlemen will feel the force of it—the first important principle is, that the people should admit that justice is well administered. With optional juries, Sir, one party must be dissatisfied. If the plaintiff talks of option, the defendant conceives that it would be disadvantageous to him. I have no idea of an optional jury: wherever it is fit to admit a jury, let there be no option: let the same mode of trial prevail with regard to all causes: let not the parties decide for themselves. An optional jury is a thing abhorrent to the law of England. The friends of the parties to the cause decide it; whereas, it should be decided without reference to the inclinations, prejudices, or fancies of either party.

How far, then, might the trial by jury be admitted into

Canada: In all cases of contract: in all cases of separation of wrong: in all cases not of legal difficulty, a jury would do extremely well in Canada: but not if you force it upon them: not if you say, you must take it. Its success would then be impossible. Juries might prevail, in any given court, to be created: all the mechanical parts being given, but as juries are occasionally resorted to, by order of the court of chancery. There is scarcely a day in which the court of chancery does not send something to be tried by a jury. I think it is the duty—I think it is the interest—of those to whom the administration of justice in Canada will be committed, to cherish the disposition to promote trial by jury. Whenever courts of judicature are created should be created so as to leave the power of resorting to juries very large and full indeed.

I beg pardon of the House for having gone pretty much at large into the general question. Though incapable of forming a decided judgment upon the business, having experienced great difference of opinion upon it, I am, upon the whole, inclined to think that, at a given time of their establishment, trial by jury might be exact in Canada, and that it is a matter of expedience whether this is the time or not: but above all, I am totally and entirely against the optional course.

*Mr. Thomas F. Munro, jun.*—As I took the liberty to second the motion of the honourable gentleman, I beg leave to say a few words in support of it. The subject of it is a matter of great concern to the people of Canada. Much has been said upon the want of education on the part of the Canadians, as unfitting them to serve upon juries. Now, I own it is my opinion—an erroneous one, perhaps—that almost any education fits a man for serving on a jury. Much, too, has been said with regard to the position of the Canadians: but I think I am justified in asserting, that though, in that position, I find them expressing a desire to have their own laws and customs restored to them, to what rule you can discover in any of those

petitions, that their prayer is confined to the criminal laws alone, I am at a loss to judge. When I consider the materials of which Canadian judges have been made, I do not think the Canadians will have much satisfaction, if they forego the advantage of a jury, and place them under their care. No gentleman will suppose by this, that I mean any reflection on Mr. Hey; but such men are not often to be found. I believe the emolument is a thousand a-year; and there are not many men of his talents to be found, for ten thousand a-year; particularly, when it is remembered, that the office is not very acceptable to an Englishman. I do not wish to go back to the predecessors of Mr. Hey and Mr. Maseres; but may not the dislike of the Canadian to English law be reasonably supposed to proceed from the manner in which that law was administered, rather than from hostility to the law itself? At one time, an army surgeon, a gentleman certainly very respectable by education, presided in the court of King's bench; but, not being versed in the English law, he could not impress the Canadians with any exalted opinion of the benefit of that law.—I have repeatedly asked, who is the author of this bill? The noble lord has told us, that no ministerial influence has been exerted. From what quarter, then, does this aversion to the introduction of trial by jury into the bill—this general condemnation of the law of England—proceed? If there is blame, it is but just that those who have not incurred that blame should throw it off their shoulders; if there is merit, it is wrong to withhold from them the honest applause of their country. There has been a great deal of skill and dexterity in the framing of it, in defining it, from the different evidences of different gentlemen. Not choosing to abide by the evidence of one man, the concoctors of it have adopted the most exceptionable part of the evidence of every one.—With regard to the governor, as a military man, I entertain for him great respect; as a gentleman, every body respects him: and, if despotic government is to be trusted to any hands—I will



not say it will be safe in those of General Carleton — but I am persuaded it will be as safe in his as in any body's. This is only doing justice to his character. When I recollect the complexion of his evidence, I am convinced that he is determined to do right; and I wish to throw as few obstacles in his way as possible. If there are any inaccuracies in the wording of this clause, let us amend them; but do not let us leave the bill without any English jury.

Mr. Ambler.<sup>(1)</sup>—This is not a question, whether trial by jury is to be introduced into the new settlements now to be formed; it is not a question, whether trial by jury should be introduced among the people of Canada, provided they are disposed to receive it; but whether it would be politic to force that particular form upon a hundred thousand persons, contrary to their inclinations. If this is so, why introduce any other law? or if you introduce any other, why confine yourselves to the trial by jury? why not introduce the *habeas corpus*? If that was to be the case, I believe you would be deceiving and provoking the Canadians; for you hold out, in this bill, that you will not take from them any law whatever contrary to their inclinations. That they are not inclined to receive this law you have evidence at the bar, and particularly the evidence of M. Lotbinière.

Mr. Byng.<sup>(2)</sup>—A learned gentleman some time ago informed the House, that this bill would not destroy juries in Canada; now, I have always understood, that there was no institution in Canada that answered, in any shape, the description of a jury. I am next told, that the establishment of juries is to be left to the will of the council; but I had rather take this half of it, than trust to a council, who hold their situations at the pleasure and will of the Crown. There is scarcely a clause in the bill but is left to the

(<sup>1</sup>) King's council, and solicitor-general to the Queen.

(<sup>2</sup>) George Byng, Esq., of Wrotham Park; father of the present member for Middlesex.

pleasure of the Crown ; which appears, indeed, to be the main drift of the whole bill. In comparison with the bill intended to be introduced, I understand it is drawn up in a tone and spirit quite legal and constitutional ; and this makes me join with my honourable friend in his anxiety to know, who the author of this bill is. Who the author is we have not been informed. He must be some great character of the law. Finding they cannot succeed in destroying the power of juries at home, it seems to be their intention to try what they can do in that distant country. They want to know first, whether such an attempt will be tolerated by three hundred and sixty British families. I do not place implicit confidence in everything that is advanced with regard to this bill. The happiness of the Canadians is said to be the main object ; and yet, when the question was asked, whether it would make the Canadians happy, we were told, that that was a question with which we had nothing to do. Sir, when gentlemen argue upon such grounds, I cannot but think there must be something concealed. The Canadians are said to be a docile people. Good God ! are we to go to Canada for docility ? We have such instances before our eyes, that we need not go to Canada for docility.

Governor *Johnstone*.—I understand, Sir, the question before you to be, whether or not, in all civil causes, when the value is above ten pounds, a trial by jury may not be instituted in any court of justice, at the demand of either of the contending parties. I am very sensible how extremely the prejudices of the people of this country run in favour of juries. I believe, not only from experience, but upon the soundest reasoning, that this institution ought to be supported ; yet I must acknowledge, with respect to other countries, that it ought only to be introduced upon much consideration. In the determination of property, which depends upon different pleadings and different statements, I do not, indeed, know whether you could allow it, in its utmost extent, without some prejudice. I may instance the

country in which I was born; though having left it very young, I cannot pretend to a great acquaintance with its laws and customs. My connection with it has, nevertheless, occasioned me to turn my thoughts much towards the subject. Now, suppose upon a trial respecting civil property, you were to introduce a jury in all cases whatever, I do think it might be attended with dangerous consequences: but to say you should exclude it in all cases would be equally absurd. Let gentlemen consider what is the constitution of Scotland, with respect to this question. The moment you pass a particular line—I am not speaking with prejudice against the country in which I was born; all things considered, I think I like it better than this, but that shall not bias my judgment—after you pass a particular line, the people have no civil rights, except that of voting for members of parliament; no juries in cases of civil property. You go into a country abounding in scenes of wretchedness, calculated to call forth the commiseration of mankind. I am convinced, that this arises alone from their being deprived of trial by jury, and from their not being permitted to vote for members of parliament, unless they possess a high qualification; which, of course, cannot be the case with the lower class of the people. Thus, they have no protection. To sit as a juror gives a man respect in the community: it makes him feel his rights; and it is this feeling which tends above all others, to diffuse the love of liberty in its greatest extent.—Notwithstanding all that has been said, I much doubt whether it would be wise to leave this question to be settled by the legislative council. Why, for the honour of a British assembly, will you leave it at the pleasure of the Crown? A learned gentleman has said, that we all go upon the supposition that a jury cannot be admitted, but that the thing is left open. Was it left open, when the bill first came into this House? The words inserted by the noble lord have left it open. These words were, that “in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada, *as the rule*

for the decision of the same." These words, few in themselves but of great comfort to my mind, were not introduced into the bill originally; and I say, that it is the duty of the House to follow up this concession further. The greatest advantage I find in a jury is, in their ability to resist the power of the Crown, to give what damages they please, and to withstand the judge, if he should go too far. For gentlemen to say, that trial by jury will be introduced by the legislature of the country, while they themselves leave it in suspense, is confessing, in fact, that the thing is right, but that, coming from the House of Lords, they are ashamed of sending the bill back with this amendment.

Mr. *Edmund Burke*.—I have been waiting, Sir, for some gentleman on the other side to rise; but finding, in this last moment of our proceedings on this bill, that no one appears inclined to do so, I wish to offer a very few words; feeling, at this late hour of the night, that what I may lose in attention, I shall gain in partiality. I chiefly address myself, Sir, to those honourable members who have just come into the House and have not heard any part of the debate, but who now come here with all the good humour which an English dinner naturally produces. Though we have not been so fortunate as to have the majority at the beginning, I have no doubt that these gentlemen, having eaten a good English dinner, which is the best thing for an English constitution, will enable us to triumph in the end.

I should have been afraid of encountering such a body of power and wisdom as presents itself on the other side of the House, if I had not found that the noble lord and his two great oracles of law and order, had all differed in their opinions. Finding them thus at variance, I thought the moment would be favourable to my view of the question, and I proposed my amendment; to which the noble lord replied, that he did not disagree with the structure of the clause—that he might fall in with it at a future time, but that he should certainly oppose it at present. A learned

gentleman said, that the view he took was extremely consistent with that clause, and that the bill would be so formed as to leave its insertion possible; but my hopes were damped again, when he told me, that if he did agree with this clause, he did not agree with that form of judicature which it proposed to establish. Thus, what comfort I got by the clause, I lost by the constitution of the judicature that was to follow. Then I found myself in my original despair; but how comforted was I, when another learned gentleman got up and said, that he was in hopes that the constitution of the courts of Canada would admit, at a future day, of the introduction of an English trial by jury; but that it was not prudent to introduce it at present. Thus, what I had got by law, I lost by prudence. I attended—it was my duty to attend—to this suggestion. The learned gentleman threw out panegyrics upon juries—panegyrics upon juries in civil causes—but thought it was not yet prudent to introduce them universally, because the inclinations of the Canadians are alien, their dispositions unsuited, to their establishment. The learned gentleman added, however, that he was in hopes that, by degrees, they would like them; and, recollecting that men get reconciled to most things by habit, I thought the giving them this optional jury was the best way of leading them into the habit of having juries. I approved of it upon the maxim, that “half a loaf is better than no bread.” The Canadians are now in possession of the practice of juries without complaining. Has any one complained, either by speech or on paper, that a jury, at the option of the parties, is odious to the Canadians? Then, Sir, you are going to take away by force the constitution of the people, of which they are in actual possession, and against which they have not made a single complaint. Observe! I do not prefer optional juries; but I must, it seems, accept them, or go without any.

I will now pass to the other part of the question—the alleged hatred of the Canadians to serve on juries; their inaptitude to the exercise of the functions. But a jury

may be fit for them, though they may not be fit for jurymen. A love of justice must belong to the Canadians, as well as to other people ; and I cannot believe that trial by jury is an odious thing to men who are subject to no undue prepossession against it. In a question upon matter of fact, where evidence is taken upon oath, between parties who are flesh of our flesh, bone of our bone, is there any thing calculated so to prejudice mankind, as to make them look upon the question of trial by jury as an odious thing ? What is the reason that you cannot repose confidence in the known reason of men, as well in that country as in this ?—But it is said, the people of Canada are averse to juries ! Have they complained of a jury ? We have not one single syllable of complaint, which has been taken at first hand. Opinions inferred from conversations may be very easily mistaken. They may have complained, very properly, that they found the laws of the land all shaken ; that they found a new rule given them, by which their family settlements were all deranged ; that they were deprived of all share in the government. But, Sir, as to the alleged dislike of these people to the trial by jury, what does the gentleman who filled the office of Attorney-General in that country with so much honour to himself tell you ? Did he point out this fact ? Did he ever give such evidence ? He spoke flatly to the contrary. He constantly spoke of it, not as a thing which they disliked, but as one of which they were ignorant. Now, dislike and ignorance are very different things. In their ignorance they confused the idea of a grand jury with that of a petty jury, and esteemed the law a tyranny. Even Mr. Hey's evidence had only a dubious word or two in it.

Having cleared my way thus far, there remains nothing but the evidence of a general officer. He, to be sure, spoke of the ignorance of the people of Canada : he told us of their having no wish to be tried by juries ; that they preferred the mode of trial by a judge, from custom, habit, and education ; and that they thought it strange that

the English residents should prefer to have their lives and properties decided upon by barbers and shoemakers. You see, Sir, how much these people are to be pitied whose authority is thus quoted; how ignorant, how much deceived, were those persons who conversed with this great officer! how little they knew of the nature of that institution which they condemned! Their objection was chiefly an objection of pride. Now, if that was a good reason to urge against the institution there, it is a good reason against it here. But the objections of the Canadians, so far as they are solid and substantial, are easily removeable, without injury to trial by jury. With regard to the objection, that it is humiliating to be tried by a jury, it can only come from those who are desirous of being above the law; who are ambitious of lording it over their brethren. To check that disposition would be one of my reasons for giving a jury; because giving a jury would be giving protection to the majority of the people, against those whose pride and arrogance make them say it is humiliating to submit to a jury. I have no objection to all the authority which weight of family, great name, and fixed property in the country can confer. These are always respectable. But how does the establishment of trial by jury necessarily contradict the feelings of this class? It does not contradict their feelings in this country. All the objections of the Canadians against the measure therefore ought to vanish.

The next objection urged against the establishment of juries is, that they would be a burthen to the people. Now, that is an objection of another sort; but what sort of objection is it? The learned gentleman has stated it with truth: he says, that no man is willing to be a juror, because he is a juror for the benefit of the community, not for his own benefit. There is no one but would wish to be excused from discharging the duties of the office. In many cases here, men must be forced to serve. Why not do in Canada, as we do here? But, if a small allowance were made, such a measure, I have no doubt, would recon-

cile the Canadians :—I would, however, rather try a little longer, and see whether these two objections, that a jury is oppressive to the poor and humiliating to the rich, cannot be thoroughly removed without it.

Another thing I forgot to allude to. We are told, that to require unanimity in a jury shocks the Canadians. The learned gentleman gave a sufficient answer to this objection ; but I shall beg leave to add a few words more. He observed, that it was the very substance and character of a jury to be unanimous. Truly, Sir, I know it is the substance and character of a jury to be unanimous by our law ; but if I could be suffered, in a great public cause, to give an opinion, I do not think that unanimity is absolutely necessary, but that the majority of a jury might do just as well. I believe it would prove no inconvenience ; because, even in this country, the majority of a jury always turns the scale. The inconvenience is this,—the rest, finding they must yield, trifle with their oath ; they cannot be quite so strict with their oath as I could wish them. I believe that, by the payment of a very small remuneration for the loss of time, all objections to juries will vanish. One learned gentleman has suggested, that compensation might be given to a jury to the amount of three pounds : but let it be left to the judge, jury, and counsel to adapt the payment to the nature of the cause. Most blameable will they be, if they establish such compensation as will make the expense eat out the suit.

Having said this, I would remark, with regard to what the learned gentleman has charged against us about forcing laws upon them, that all such accusations vanish into air : they are not applicable to the case. We do not know that they abhor a jury—that they abhor a collective jury, in which they themselves will bear a considerable part. If it be proposed hereafter to give a jury to Canada, what will the answer be ? “ Dare I give what the parliament of England has refused ? ” You never will have a jury, if you do not put it into this bill : it is absolutely and clearly impossible. How many years elapsed, before you thought of making



any constitution for Canada at all ! And now, instead of making them free subjects of England, you sentence them to French government for ages. I meant only to offer a few words upon the part of the Canadians, and leave them to their misery. They are condemned slaves by the British parliament. You only give them new masters. There is an end of Canada.

Sir, having given up a hundred and fifty thousand of these people, having deprived them of the principles of our constitution, let us turn our attention to the three hundred and sixty English families. It is a small number; but I have heard, that the English are not to be judged of by number but by weight; and that one Englishman can beat two Frenchmen. Let us not value that prejudice. I do not know that one Englishman can beat two Frenchmen; but I know that, in this case, he ought to be more valuable than twenty Frenchmen, if you estimate him as a freeman and the Frenchmen as slaves. What can compensate an Englishman for the loss of his laws? Do you propose to take away liberty from the Englishman, because you will not give it to the French? I would give it to the Englishman, though ten thousand Frenchmen should take it against their will. Two-thirds of the whole trading interest of Canada are going to be deprived of their liberties, and handed over to French law and French judicature. Is that just to Englishmen? Surely, the English merchants want the protection of our law more than the noblesse! They have property always at sea; which, if it is not protected by law, every one may catch who can. No English merchant thinks himself armed to protect his property, if he is not armed with English law. I claim protection for the three hundred and sixty English families, whom I do know, against the prejudices of the noblesse of Canada, whom I do not know. I must put the House in mind of what an honourable gentleman said in the course of this debate—that it was seldom that any improvement was introduced into any country, which did not, at first, militate against the prejudices of the people. Was all England

pleased with the revolution? No. The wishes of the majority were sacrificed to the reason of the better part, and the interest of the whole; and we are now enjoying the benefits of that choice—benefits brought upon the ignorant people, not by force, but with an easy hand. The Canadians are now struggling with their old prejudices in favour of their former laws. A new establishment is proposed to them; which throws them into some disorder, some confusion—"All the interim is like a phantasma and a hideous dream." The honourable gentlemen opposite, taking advantage of this confusion, say—We have got a basis; let us see how much French law we can introduce! With a French basis, there is not one good thing that you can introduce. With an English basis, there is not one bad thing that you can introduce. Take the rule of the law of Canada for the rule of the constitution of your courts, and it will be the rule of all your proceedings: take it for the rule of your judicature, and sooner or later, it will be the rule of your legislature. How often have we had occasion in this House to quote the practice of the courts below! how many lights have we derived from the learned gentlemen pleading there! how many lights have we derived from you, Sir! how many from the judicature of the upper House! Where there is a basis of French judicature, of French law, the legislature will never think of grafting upon it an English constitution.

With regard to state policy, which is the last point I shall touch upon—the preservation of their old prejudices, their old laws, their old customs, by the bill, turns the balance in favour of France. The only difference is, they will have George the Third for Lewis the Sixteenth. In order to make Canada a secure possession of the British government, you have only to bind the people to you, by giving them your laws. Give them English liberty—give them an English constitution—and then, whether they speak French or English, whether they go to mass or attend our own communion, you will render them valuable and useful subjects of Great Britain. If you refuse to do this, the

consequence will be most injurious : Canada will become a dangerous instrument in the hands of those who wish to destroy English liberty in every part of our possessions.

The question being then put, that the said clause be read a second time, the House divided—

## TELLERS.

YEAS	{ Mr. Mackworth . . . . . }	40
	{ Mr. Thomas Townshend, jun. . . . }	
NOES	{ Mr. Bradshaw . . . . . }	83
	{ Mr. Robinson . . . . . }	

So it passed in the negative.<sup>(1)</sup>

Mr. *Thomas Townshend, jun.* — I rise to move a clause, for making temporary that part of the bill, which relates to the legislative council. M. Lotbinière certainly deserves the character given him by the noble lord, and I beg to refer the noble lord to his evidence, in which he stigmatizes the bill as a plan of despotism. He says, that if it passes he will never return to Canada. If the motion is agreed to, I shall propose to fill up the blank with the words "seven years."

Lord *North*.—That this establishment is not to be considered perpetual, is admitted in the bill itself. The only effect of any limitation is to weaken the authority of government. As soon as the Canadians shall be in a condition to receive an assembly, it will be right they should have one. They will naturally wish to get the government into their own hands. Though I would give the Canadians their laws; though I would give them their religion; I do not think it would be wise, at present, to give them an assembly. It is the opinion of M. Lotbinière, that the admission of Canadians into the legislative council will have the most salutary effect. His objection went upon

(1) "I voted in the majority."—H. C.

the supposition, that no Canadians would be admitted into it.

Mr. *Thomas Townshend*, jun.—The situation of the Canadians is really an extraordinary one. If they are so misled, so prejudiced, as not to wish for an institution so favourable to liberty, as we in this country conceive an assembly to be, you exclaim, do not force liberty upon them ! But, if their eyes are open to its advantages, and they begin to desire it, you then say, recollect they are Roman Catholics, born subjects of France, and, consequently, not to be trusted ! This is the first time I ever heard that experimental legislation ought not to be temporary. If, at the expiration of seven years, you find they are not in a situation to enjoy the conferred benefit, you can then withhold it.

Mr. *Stanley*.—The Canadians, if attached to the idea of a general assembly, will look upon this clause as a promise from the legislature, that they shall obtain it. Now, it would be very unwise, if you have a distrust and jealousy of their fidelity, to create such an impression. We should be contracting an engagement with the Canadians, which the constitution may not enable us to make good.

The question was put, that this clause be read a second time ; which passed in the negative.

Mr. *Dempster*.—I rise to propose a clause, for establishing rules to be observed on the making of ordinances. Laziness and precipitation, ignorance and folly, eternally attend despotic governments. The people ought to know what ordinances are passed ; and it would be well if the supreme court of justice had a negative upon any edict.

Lord *North*.—I cannot adopt the proposition of giving the power of a negative to the supreme court of justice. It is taken from a supposed practice on the part of the government of France. They say, that there should be a power of negating all edicts ; but the people there do not claim a negative, and the chief justice will be one of the legislative council. It is certainly right, that every matter

of importance should be placed upon the minutes, and that, in passing laws, they should not be passed at one sitting: that is of great consequence. But the legislative council is already very much limited; and such regulations will be much better made in another place. Parliament should not go further than merely lay down the principle. We should produce much embarrassment by taking upon ourselves the task of regulating the minuter details of legislation.

*Mr. Dempster.*—I will not insist upon any clause at this time of night, or in this advanced stage of the debate. The regulation proposed was not taken from the constitution of France: we have a precedent much nearer home, made last session of parliament, relative to the government of the East India Company. All orders were to be registered; till which they were to have no effect: the noble lord himself proposed that regulation. I did not expect—which is the case as this law now stands—that we should have delivered over the Canadians to his Majesty and his ministers, to be dealt with according to their pleasure, without its ever being in our power to relieve them. I shall propose an amendment, on bringing up this clause, for the introduction of the law of *habeas corpus*, and of bail in cases of commitment.

*Lord Clare.*—I submit, whether it would not be better to have this clause brought up, and placed on the votes. The noble lord says, he does not object to the principle: if the Canadians do not see the clause, they may suppose that his objection lies against the principle.

*Mr. Dempster.*—If instructions are given to the governor, the Canadians will see, that there is no objection to the principle.

The clause was brought up, and read the first, but not the second time.

*Mr. Dempster.*—After the words “criminal law of England,” I propose that the words “and of the English laws

of *habeas corpus* and of bail in cases of commitment," be added.

The question was then put, that the words "and of the English laws of *habeas corpus* and of bail in cases of commitment," be inserted. The House divided:—Yeas, 21; Noes, 76. So it passed in the negative.<sup>(1)</sup>

Mr. *Dempster*.—I beg leave to propose, that the legislative assembly have full power and authority to meet in open council. In all assemblies abroad, they debate in open council.

Lord *North*.—It is a great convenience in courts of judicature, but not in legislative proceedings. Whether they will admit witnesses must be left to themselves. In point of fact, I believe the honourable gentleman has been misinformed as to assemblies abroad.

The motion was negatived.

Mr. *Dempster*.—Whether the governor shall preside in the legislative council, or whether its edicts shall be brought to him for his approbation, is not expressed in the bill. I think it better that the governor should not be present. Let him be presumed present, like his Majesty.

Lord *North*.—Whether the assembly should sit with or without the governor, I cannot say; but he is to have the negative.

The bill was ordered to be read the third time on Monday.

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*Monday, June 13.*

The order of the day was read for the third reading of the bill.

Mr. *Charles Fox*.—I do not rise, Sir, to enter into a debate on the merits of this bill, but to desire that the entry on

<sup>(1)</sup> "I voted against inserting these words."—H. C.

the journals of this House of the 5th of March, 1677, may be read. [The said entry was accordingly read by the clerk, and is as follows; — “An engrossed bill from the Lords, intituled, ‘An Act for the better payment of church-rates; small tithes, and other church duties,’ resolved, that the bill be rejected.”] I believe, Sir, I need not make any observations upon the passage just read, to prove that the House of Commons, at that time, considered bills relating to tithes as belonging exclusively to this House. Indeed, I do not know how they could possibly regard them otherwise. We are now, Sir, to consider, for the last time, whether this bill is so good a bill—so congenial to the feelings and habits of those for whose benefit it is alleged to be brought in—that, for the sake of passing it, we should give up one of the most ancient, most important, I might say, most inalienable privileges of this House. I could not forbear saying thus much; for it has ever been my fortune to stand up in defence of its privileges. I have always acted with pleasure with those who said, that our glory depends upon our privileges: I have always differed from those who abandon those privileges. In the course of this parliament, we have given up privileges enough, and at the end of it, if we pass this bill, we shall give up the only privilege not yet violated. I submit to the House, whether they will close this parliament, with giving up the only privilege left.—We have suffered every insult but this last. Will you end this parliament with submitting to that? Having said thus much, I will only add a few words, to show that this privilege is undoubtedly acknowledged, not only with regard to tithes, but as to all manner of dues that may be raised. If any man can find out an argument, to prove that raising tithe is not raising money, raising dues, &c. I should be glad to hear him; but, assuming that to be impossible, I would only submit, whether this privilege should be given up at this time, for the sake of such a bill as this, or for the sake of any bill whatever. After having given up privileges of various kinds, such as those of protection to juries,

and of judgment upon elections; after having suffered poor printers to insult us with impunity, on the principle that they were too contemptible to be resisted—are we now to crown all, by considering the House of Lords as too contemptible to be opposed, and to surrender to them a privilege, that we have carefully retained until this time?

Mr. *Cooper*.—The House is certainly much obliged to the honourable gentleman for his great care of its privileges, upon this and every other occasion; but I can assure him, that those privileges are left untouched and unaffected by this bill. For the correctness of this assertion, I refer him to the proceeding in the reign of King William; when the Lords having sent down a bill for the more speedy and more easy recovery of small tithes, the Commons, on the 9th of February, 1691, returned it with twelve amendments; in one of which they proposed, that the method prescribed for the recovery of small tithes should be extended to the recovery of wages and dues belonging to clerks and sextons. By the present bill, no new rate or burthen is laid upon the subject; and therefore the privilege remains as inviolate as the honourable gentleman could wish it to be.

Mr. *Howard*.—I cannot help thinking, that this is a money bill, and coming as it does from the Lords, that it ought not to pass. I do not think that the precedent just quoted applies to this case; and I know of only one, in the whole records of parliament, that does; which was in the reign of Edward the Sixth, when, in 1553, the Lords sent down a bill for tonnage and poundage with amendments. This case is mentioned by Bishop Burnet, in his History of the Reformation; who states it to have been a direct infringement of the rights and privileges of the House of Commons. But I should be sorry to have a precedent taken from those days, when the Commons were not free, and applied to these. Henry the Eighth told the Commons they were beasts; and in the time of Elizabeth they were not emancipated. She says, in one of her speeches to the Commons, after they had fallen upon their knees before



her, "You may stand up." I do not know, Mr. Speaker, how you would like to go down on your knees before your Sovereign on such an occasion; but I should not choose to accompany you in your genuflection. Yet, it is to those times that we are referred for precedents to determine concerning our rights and privileges. I defy any man to shew me one instance since those times, which would justify the passing of this bill. I have considered it well, and I cannot separate my idea of it from that of a money bill; in which character, it is a violation of your privileges, confirmed by long usages and customs. It is, moreover, a bill which goes to introduce tyranny and arbitrary power into the colonies, to give a further establishment to popery, to annul the bill of toleration, and to destroy the act of *habeas corpus*. For these reasons, I have opposed it, and I venture to oppose it again. In short, I look upon it as a most abominable and detestable measure, which ought to be rejected. With respect to the other reason given by the honourable gentleman, that it is a money bill, I think no treatment too contemptuous can be applied to it. On that, and that account alone, you, Sir, should throw it over the table, and somebody else should kick it out at the door.

The question being put, that the bill, with the amendments, do pass, the House divided:—

## TELLERS.

YEAS.	{ Mr. Bradshaw . . . . . }	56
	{ Mr. Cooper . . . . . }	
NOES.	{ Mr. Howard . . . . . }	20
	{ Mr. Dempster . . . . . }	

So it was resolved in the affirmative. The bill was then passed. It received the royal assent on the 22nd; when the parliament was prorogued, and shortly after dissolved.

## APPENDIX.

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(A.) *See p. 3.*

PROCLAMATION OF THE SEVENTH OF OCTOBER, 1763, RELATIVE  
TO THE NEW GOVERNMENTS IN NORTH AMERICA.

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BY THE KING.

### A PROCLAMATION.

GEORGE, R.

WHEREAS we have taken into our royal consideration the extensive and valuable acquisitions in America, secured to our Crown by the late definitive treaty of peace concluded at Paris the 10th day of February last; and being desirous that all our loving subjects, as well of our kingdoms as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation; we have thought fit, with the advice of our privy council, to issue this our royal proclamation, hereby to publish and declare to all our loving subjects, that we have, with the advice of our said privy council, granted our letters patent under our great seal of Great Britain, to erect within the countries and islands, ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of Quebec, East Florida, West Florida, and Grenada; and limited and bounded as follows, *viz.*

First, the government of Quebec, bounded on the Labrador

coast by the river St. John, and from thence by a line drawn from the head of that river, through the lake St. John, to the south end of the lake Nipissim; from whence the said line, crossing the river St. Lawrence and the lake Champlain in 45 degrees of north latitude, passes along the high lands, which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea; and also along the north coast of the Bayes des Chaleurs, and the coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the river St. Lawrence by the west end of the island of Anticosti, terminates at the aforesaid river St. John.

Secondly, the government of East Florida, bounded to the westward by the Gulph of Mexico and the Apalachicola river; to the northward, by a line drawn from that part of the said river where the Catahouchee and Flint rivers meet, to the source of St. Mary's river, and by the course of the said river to the Atlantic Ocean; and to the east and south by the Atlantic Ocean, and the Gulph of Florida, including all islands within six leagues of the sea coast.

Thirdly, the government of West Florida, bounded to the southward by the Gulph of Mexico, including all islands within six leagues of the coast from the river Apalachicola to Lake Pontchartrain; to the westward, by the said lake, the Lake Maurepas, and the river Mississippi; to the northward, by a line drawn due east from that part of the river Mississippi which lies in  $31^{\circ}$  north latitude, to the river Apalachicola, or Catahouchee; and to the eastward, by the said river.

Fourthly, the government of Grenada, comprehending the island of that name, together with the Grenadines, and the islands of Dominico, St. Vincent, and Tobago.

And to the end that the open and free fishery of our subjects may be extended to, and carried on upon the coast of Labrador and the adjacent islands, we have thought fit, with the advice of our said privy council, to put all that coast, from the river St. John's to Hudson's Straits, together with the islands of Anticosti and Madelane, and all other smaller islands lying upon the said coast, under the care and inspection of our governor of Newfoundland.

We have also, with the advice of our privy council, thought

fit to annex the islands of St. John and Cape Breton, or Isle Royale, with the lesser islands adjacent thereto, to our government of Nova Scotia.

We have also, with the advice of our privy council aforesaid, annexed to our province of Georgia, all the lands lying between the rivers Attamaha and St. Mary's.

And whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are, and shall become the inhabitants thereof; we have thought fit to publish and declare, by this our proclamation, that we have, in the letters patent under our great seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America, which are under our immediate government; and we have also given power to the said governors, with the consent of our said councils, and the representatives of the people, so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and government of our said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to, our said colonies, may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England: for which purpose we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining all causes as well criminal as civil, according to law and equity, and, as near as may be, agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the

sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to us, in our privy council.

We have also thought fit, with the advice of our privy council as aforesaid, to give unto the governors and councils of our said three new colonies upon the continent, full power and authority to settle and agree with the inhabitants of our said new colonies or to any other person who shall resort thereto, for such lands, tenements, and hereditaments, as are now, or hereafter shall be, in our power to dispose of, and them to grant to any such person or persons, upon such terms, and under such moderate quit rents, services and acknowledgments, as have been appointed and settled in other colonies, and under such other conditions as shall appear to us to be necessary and expedient for the advantage of the grantees, and the improvement and settlement of our said colonies.

And whereas we are desirous, upon all occasions, to testify our royal sense and approbation of the conduct and bravery of the officers and soldiers of our armies, and to reward the same, we do hereby command and empower our governors of our said three new colonies, and other our governors of our several provinces on the continent of North America, to grant, without fee or reward, to such reduced officers as have served in North America during the late war, and are actually residing there, and shall personally apply for the same, the following quantities of land, subject, at the expiration of ten years, to the same quit-rents as other lands are subject to in the province within which they are granted, as also subject to the same conditions of cultivation and improvement, *viz.*

To every person having the rank of a field officer, five thousand acres.

To every captain, three thousand acres.

To every subaltern or staff-officer, two thousand acres.

To every non-commission officer, two hundred acres.

To every private man, fifty acres.

We do likewise authorize and require the governors and commanders-in-chief of all our said colonies upon the continent of North America, to grant the like quantities of land, and upon the same conditions, to such reduced officers of our navy of like rank, as served on board our ships of war in North America, at the times

of the reduction of Louisbourg and Quebec, in the late war, and who shall personally apply to our respective governors for such grants.

And whereas it is just and reasonable, and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians, with whom we are connected and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to or purchased by us, are reserved to them, or any of them, as their hunting grounds; we do therefore, with the advice of our privy council, declare it to be our royal will and pleasure, that no governor or commander-in-chief, in any of our colonies of Quebec, East Florida, or West Florida, do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as described in their commissions: as also, that no governor or commander-in-chief of our other colonies or plantations in America, do presume for the present, and until our further pleasure be known, to grant warrant of survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean, from the west or north-west; or upon any lands whatever, which not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them.

And we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve under our sovereignty, protection, and dominion for the use of the said Indians, all the land and territories not included within the limits of our said three new governments, or within the limits of the territory granted to the Hudson's Bay company; as also all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and licence, for that purpose first obtained.

And we do further strictly enjoin and require all persons whatever, who have either wilfully or inadvertently seated themselves

upon any lands, within the countries above described, or upon any other lands, which, not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

And whereas great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians; in order, therefore, to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our privy council, strictly enjoin and require, that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians within those parts of our colonies where we have thought proper to allow settlement; but that, if at any time, any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the governor or commander-in-chief of our colony respectively, within which they shall lie: and in case they shall lie within the limits of any proprietaries, conformable to such directions and instructions, as we or they shall think proper to give for that purpose: and we do, by the advice of our privy council, declare and enjoin, that the trade of the said Indians shall be free and open to all our subjects whatever, provided that every person who may incline to trade with the said Indians, do take out a licence for carrying on such trade, from the governor or commander-in-chief of any of our colonies respectively, where such person shall reside, and also give security to observe such regulations as we shall at any time think fit, by ourselves or commissaries, to be appointed for this purpose, to direct and appoint for the benefit of the said trade: and we do hereby authorize, enjoin, and require the governors and commanders-in-chief of all our colonies respectively, as well those under our immediate government, as those under the government and direction of proprietaries, to grant such licences without fee or reward, taking especial care to insert therein a condition, that such licence shall be void, and the security forfeited, in case the person, to whom the same is granted, shall refuse or neglect to observe such regulations as we shall think proper to prescribe as aforesaid.

And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of Indian affairs within the territories reserved, as aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever, who, standing charged with treasons, misprisions of treasons, murders, or other felonies or misdemeanours, shall fly from justice and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed of which they shall stand accused, in order to take their trial for the same.

Given at our Court of St. James's, the 7th day of October, 1763, in the third year of our reign.

THE END.











